

(2014) 08 DEL CK 0185

Delhi High Court

Case No: LPA 516/2014

Shiv Kumar Giri

APPELLANT

Vs

Management of Hotel Siddharth
Continental

RESPONDENT

Date of Decision: Aug. 8, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: S.P. Garg, J; Reva Khetrapal, J

Bench: Division Bench

Advocate: Ashok Aggarwal, Anuj Aggarwal and Aarushi Aggarwal, Advocate for the Appellant

Final Decision: Dismissed

Judgement

S.P. Garg, J.

CM No.12757/2014

For the reasons mentioned in the application, the delay in filing the present appeal is condoned.

The application stands disposed of.

LPA 516/2014

1. In this intra Court appeal, the Appellant Shiv Kumar Giri impugns a judgment dated 16.04.2014 in W.P.(C) 4764/1995 delivered by learned Single Judge of this Court whereby the writ petition filed to set aside the award dated 07.04.1995 in I.D.No.198/87 whereby the Labour Court answered the reference made by the appropriate Government by holding that the Appellant was not entitled to any relief was dismissed.

2. Shorn of details, the facts of the case are that the Appellant Shiv Kumar Giri was in the employment of the Respondent Hotel as an Electric Helper. On 02.05.1984, he proceeded on sanctioned leave. Appellants case was that he fell seriously ill and at his request, the leave was extended. After recovery from illness when he went to resume duties on 20.08.1984 with a medical certificate / fitness, Respondent did not allow him to join and asked him to come next day. On the next day also he was not permitted to join the duties and was assured to be taken on duty after few days. Ultimately, the Respondent terminated his services on 12.09.1984 illegally without paying his dues. It was urged that the termination was effected without any charge and enquiry. In his claim petition, the Appellant prayed for reinstatement and continuity in service with full back wages.

3. The Respondents case before the Labour Court was that the Appellants services were never terminated but his name was removed from the rolls due to his continuous unauthorised absence from duties in accordance with the terms and conditions of the service. It was further alleged that the Appellant was granted leave on account of his sisters marriage from 02.05.1984 to 07.05.1984. Despite intimations to join the duties, the Appellant remained absent w.e.f. 08.05.1984 onwards. It was their case that on 21.05.1984, they informed the Appellant about his unauthorised absence and requested him to report for duties immediately, not later than 24.05.1984. The Appellant did not join the duties despite receipt of letter on 25.05.1984 at his native village address. Another letter dated 25.05.1984 was sent through registered AD with the request to join the duties latest by 29.05.1984. The said letter was received back with the report of the postal authorities that the addressee had gone for treatment to ESI Dispensary, Akbarpur, Distt.Faizabad. Again a letter to the ESI Dispensary, Akbarpur, Distt.Faizabad were sent and information was received that medical certificate from 19.05.1984 was given to the Appellant with the fitness certificate on 09.06.1984, whereby he was declared fit to resume duties on 11.06.1984. Despite that, the Appellant did not join his duties. Again, a letter dated 05.07.1984 was written to the Appellant to report for duty, but in vain. When no intimation was received from the Appellant and he continued to remain un-authorizedly absent from his duties, vide letter dated 20.07.1984, the Appellant was informed that the Respondent had no alternative, but to remove his name from the rolls w.e.f. 11.06.1984.

4. The parties adduced their respective evidence before the Labour Court. After appreciating the evidence and considering the rival contentions of the parties, the Labour Court concluded that the Appellant remained absent without informing the Respondent in violation of Certified Standing Orders, Clause 23, despite his being declared fit by the ESI Dispensary on 09.06.1984 and as such, he must be deemed to have left the services of the company, and his employment thereby automatically stood terminated. It further observed that the action of Respondent did not amount to "retrenchment as the Appellant was given ample opportunity of being heard. Aggrieved by the said orders, the Appellant preferred writ petition before the

learned Single Judge which did not find favour and was dismissed by the impugned judgment.

5. We have heard the learned counsel for the Appellant and have examined the record. Undisputedly, the Appellant was in the employment of the Respondent Hotel as an Electric Helper and his last drawn salary was Rs. 475/- per month. It is not in dispute that the Appellant had proceeded on leave w.e.f. 02.05.1984 after getting it sanctioned. He was to join his duties on 08.05.1984. It is also not in controversy that the Appellant did not join his duties thereafter and as per his own showing, he reported for duty on 20.08.1984 along with medical certificate. Apparently, the Appellant remained absent from his duties w.e.f. 08.05.1984 till 20.08.1984. It was imperative for the Appellant to explain his unauthorized absence during the period from 08.05.1984 to 20.08.1984. The Appellant did not produce any cogent material / document on record to show that during this period because of illness or any other reason, he was unfit / unable to join his duties. The Appellant has not placed on record any application sent to the Respondent for extension of leave after 07.05.1984 on any specific ground. Contrary to that, the Respondent produced and proved various documents on record to show that letter dated 21.05.1984 (Ex.WW1/5) was sent to the Appellant to report for duty latest by 24.05.1984. Mark-Y is another letter dated 25.05.1984 written by the Respondent, calling upon the Appellant to report by 29.05.1984. The Respondent even wrote a letter (Ex.MW1/4) to the Medical Incharge, ESI Dispensary, Akbarpur, Faizabad where the Appellant had gone for treatment. It has come on record that ESI authorities declared the Appellant fit to join his duties on 11.06.1984. Dr.R.S.Mishra, Incharge, ESI Dispensary, Akbarpur, Faizabad entered into the witness-box and proved the letter (Ex.MW1/7) whereby the necessary fitness certificate was given. The Appellant in the explanation given in his statement dated 19.04.1991 before the Labour Court admitted that he was discharged from ESI Dispensary, Akbarpur, Faizabad on 11.06.1984. However, he took a new plea that after reaching home his condition became serious and he went for treatment at Zila Parishad Osdhalaya, Bangaon, Bhidi, U.P. as the dispensary at Akbarpur was 25 km. away from his home and the rivers were flooded due to heavy rains. He wrote a letter marked "D to the management on 12.06.1984 for extension of leave under UPC receipt Ex.WW1/9. This plea taken for the first time in the statement was not believed by the Labour Court. The findings on this aspect are relevant to note :

"21. This new story put forth was never stated by him either at the time of filing of statement of claim or at the time when he filed the rejoinder. It is just an improvement and appeared to be afterthought. His claim was that after reaching home, after he was discharged by the ESI Dispensary on 11.06.84, he fell ill. This assertion is belied by the reply of Dr.Misra stated above as it in fact he was discharged from the dispensary on 09.06.84 and was given joining time for two days and was declared fit to join duty on 11.06.84. He claimed that it was rainy season and rivers were flooded so he could not inform the management rather he had

gone to Jila Parsihad Aushdhalaya. If his version is accepted as true, the perusal of letter dated 12.06.84 revealed that it was typed letter, not only this, the other letters purported to have been written by him are also typed letters. It further belied his version that he could not move out due to heavy rain whereas the typing facilities are available only in Akbarpur. In his cross-examination, he admitted that Ex.WW1/4 was got typed by his brother from Akbarpur. He also admitted in his cross-examination that he never remained admitted in ESI Dispensary as there are not any facilities of admission for patients. "

6. Apparently, the Respondent made all sincere efforts to remind the Appellant to report for duty and to explain circumstances for his absence or furnish the required medical certificate. However, for the reasons known to the Appellant, he did not seek any extension of leave on any genuine ground and failed to adduce any cogent and reliable evidence to justify his unauthorized continuous absence for more than three months. It cannot be inferred by any stretch of imagination that the Appellant was not given reasonable and sufficient opportunities of being heard.

7. The learned Single Judge has recorded clear findings that the Appellant was in violation of the terms and conditions of the appointment whereby he was governed by Standing Orders, Rules, Regulations and Instructions for the time being in force. Para 23 of the Certified Standing Orders (Ex.MW1/9) reads as under :

"23. (a) If an employee remains absent beyond the period of any kind of leave originally granted or subsequently extended, he shall be deemed to have abandoned the services of the Hotel and his name shall be struck off from the rolls of the Hotel unless he returns to duty within 8 days of the expiry of the leave so granted and explains his overstay to the entire satisfaction of the Management.

(b) If an employee remains absent without permission or leave for a period exceeding 8 days and does not report on duty even after notice from the Management, he shall be deemed to have abandoned his service with the hotel and his name shall be struck off from the rolls of the company."

8. The learned Single Judge relied upon [Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another,](#) , where the validity of the above provision was upheld. The Supreme Court, considering the provision under which, the employee was treated to have voluntarily abandoned the service held :

"17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are: (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the Tribunal will proceed; Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the

Tribunal consists of several members they all must sit together at all times; Tribunal should act independently and should not be biased against any party; its action should be based on good faith and order and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above.

18. Bank has followed the requirements of Clause 16 of the Bipartite Settlement, it rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in Clause 16 of the Bipartite Settlement.

19. This undue reliance on the principles of natural justice by the Tribunal and even by the High Court has certainly led to miscarriage of justice as far as Bank is concerned. Conduct of Dayananda as an employee of the Bank has been astounding. It was not a case where the Tribunal should have given any relief to Dayananda and yet the Bank was directed to reinstate him with continuity of service and mercifully the latter part of the relief High Court struck down. There was no occasion for the Tribunal to direct that Dayananda be reinstated in service or for the High Court not to have exercised its jurisdiction under Article 226 of the Constitution to set aside the Award."

9. The Supreme Court in the aforesaid case ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities.

10. Abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as "retrenchment from service as urged. Long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee. In [Vijay S. Sathaye Vs. Indian Airlines Ltd. and Others,](#) the Supreme Court observed :

"9. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the

bonds of service come to an end automatically without requiring any order to be passed by the employer."

11. In the instant case, the Respondent remained absent beyond the period of sanctioned leave and subsequently extended leave for more than three months and opted to resume services on 20.08.1984 without specifying the reasons for continuous absence. He was clearly in violation of the terms and conditions of the provisions by which he was governed and is deemed to have abandoned the service. The Appellant was not justified in remaining un-authorizedly absent from duty for more than three months because in the interest of discipline of any institution or organisation, such an approach cannot be countenanced. The nature of Appellants job as Electric Helper in a hotel was of urgent need and prolonged absence from duty for more than three months cannot be considered reasonable or bonafide. No establishment can function if it allows the employees to behave in such a manner.

12. We find no illegality or irregularity in the order dated 12.09.1984 which is based upon fair appraisal of the evidence and warrants no interference. The appeal is dismissed. No order as to costs.