

(2011) 01 KL CK 0010

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16894 of 2010

Chairman and Managing Director HOC Ltd. and Anr

APPELLANT

Vs

Induchoodan C.G.

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Citation : (2011) 2 KLJ 77

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : E.K. Madhavan; P. Vijayamma and V. Krishna Menon, for the Appellant; A.T. Anilkumar, for the Respondent

Judgement

Ramaghandran Nair, J.—This Writ Petition is filed challenging the order of the Central Administrative Tribunal directing the petitioners to accept respondent's resignation and give him terminal benefits. We have heard learned Standing Counsel for the petitioners and learned counsel appearing for the respondent.

2. The respondent, while serving as Production Manager, applied for leave on 09/06/2008 to go abroad for a period of one month from 17/06/2008. Even though leave application was submitted on 09/06/2008, the respondent was not given any communication until 17/06/2008, and therefore he left for Saudi Arabia to visit his brother there. The petitioners' case is that the leave application submitted was defective in as much as it was not in the prescribed form and did not contain all the details, and therefore on 23/06/2008 they sent a telegraphic communication of the same to the respondent. The respondent thereafter submitted another leave application on 28/06/2008 for one year special leave to take up employment abroad. Since no reply was received, the respondent wrote another letter on 14/07/2008 repeating same request with an alternate suggestion to the Company that if leave available in credit or one year long leave cannot be granted, then his request for leave shall be treated as a letter of resignation, so that he will be relieved from duty. The request for leave was rejected by the petitioners on 23/07/2008 and instead of granting an

opportunity to the respondent to return and join for duty, the petitioners initiated disciplinary proceedings for unauthorised leave. This was done vide letter dated 14/08/2008. The respondent challenged the disciplinary proceedings before the CAT by filing an OA, which was allowed by the CAT holding that there is no act of indiscipline on the part of the respondent warranting disciplinary action. The Tribunal clearly found that even before the issuance of charge memo, the respondent vide letter dated 14/07/2008 tendered resignation, which according to him, was an option availed by him in the absence of leave being granted by the petitioners, so that he could be relieved from the service. After hearing both sides and after going through the records and the order of the Tribunal, we do not find any merit in the allegation of the petitioners that the respondent has committed an act of indiscipline warranting action against him. Admittedly the respondent was in service for more than 20 years and he was the Unit Head prior to applying for leave for one month to go abroad. The respondent has a specific case that he was victimised for his disagreement with the Management for outsourcing repair of certain equipments. Learned Standing Counsel for the petitioners has disputed this. However, we do not propose to go into this question because irrespective of whether there is any motive for the petitioners to proceed against the respondent or not, facts clearly establish that the respondent was not involved in any misconduct and he could not be proceeded against for leaving abroad on 17/06/2008 without any express orders granting leave by the petitioners because leave application was submitted well in advance on 09/06/2008. If the petitioners declined the leave application within one week and communicated the same to the respondent any date prior to 17/06/2008, he obviously would not have gone abroad. In our view, when an application for leave is submitted that too by a Senior Officer of the Company for going abroad for a month, and if no reply is received within a reasonable time, there is nothing wrong in assuming that the Company had no objection in granting the leave. Further it is seen from subsequent developments that when the respondent applied for long leave with a request that if the Company cannot grant leave he may be allowed to resign from the Company. In our view, the option available to the Company was either to grant him leave in terms of the request or to allow him to resign from the service. The Tribunal rightly held that the developments above stated did not give rise to a case for disciplinary action against a senior officer of the Company, who served the Company for a period of more than 20 years without any complaint whatsoever. Learned counsel for the respondent submitted that inspite of the elapse of two years, the post remains vacant and the respondent is willing to rejoin and work with the Company. It is worthwhile for the Management to consider whether the respondent could be inducted back and allowed to serve the Company because he has served the Company over two decades to the satisfaction of the Management. However, we do not want to issue any direction to the Company in this regard because the same does not arise from the order of the CAT. It is up to the Management to keep in mind the interest of the Company and decide whether an experienced person should be restored to the Office for the benefit of the Company itself. Leaving this option to

the Company, we direct the Company, in the alternate, to implement the Tribunal's order without any delay if the respondent cannot be absorbed in service again.

This Writ Petition is disposed of as above.