

**(2009) 03 OHC CK 0085**  
**In the Orissa High Court**

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|-------------------------------------------------|------------|
| Orissa Bridge and Construction Corporation Ltd. | APPELLANT  |
| Vs                                              |            |
| Surendra Chandra Das and Others                 | RESPONDENT |

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**Date of Decision :** 25-03-2009

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 12, 2, 25F

**Citation :** (2009) 107 CLT 840 : (2009) 2 OLR 797 Supp

**Hon'ble Judges :** B.S. Chauhan, C.J;I. Mahanty, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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**Judgement**

B.S. Chauhan, C.J.—This writ appeal has been filed for quashing the Order Dated 15.9.2000 passed by the Learned Single -Judge in OJC No. 4992 of 2000 affirming the Judgment and award dated, 16.7.1999 passed by the Labour Court, Jeypore, by which the Writ Petition filed by the present Appellant against the award of reinstatement and 25% back wages had been dismissed.

2. The facts and circumstances giving rise to the case are that the Respondent-employee made a claim that he worked on D.L.R. basis continuously from 11.11.1986 to 1.10.1994 and he was not allowed to work thereafter, rather his services were terminated without compliance of the statutory requirements contained in the provisions of Section 25-F of the Industrial Disputes Act, 1947. The matter was referred to the Labour Court u/s 10(1) read with Section 12(5) of the Act, 1947. The Appellant employer contested the claim by filing written statement denying the allegations made therein and it was suggested therein that Respondent-employee had been transferred from Hatithota to join under the Deputy Project Manage, Gumuda vide letter dated 2.10.1994, but he did not join at the transferred place and also refused to accept the monthly wages. The Labour Court concluded the proceedings and made the award dated 16.7.1999 issuing direction to reinstate with 25% back wages.

3. Being aggrieved, the Appellant approached this Court by filing Writ Petition

which had been dismissed by the impugned Judgment and order. Hence this appeal.

4. Learned Counsel for the Appellant submitted that the Judgment of the Learned Single Judge is not a speaking one and disposal of the Writ Petition is not permissible in such a manner. It was a clear cut case of abandonment of service as the Respondent-employee did not join at the transfer place and he was under the obligation to ensure compliance of the transfer order passed by the authority and therefore, Judgment and order of the Learned Single Judge is liable to be set aside.

5. This appeal was filed six years back and no attempt had ever been made by the Learned Counsel for the Appellant to get it listed. It is listed for the first time in Court and that too, on the direction of the Court to list the old matters.

6. We have considered the submissions made by the Learned Counsel for the Appellant. Undoubtedly, the Judgment and order of the Learned Single Judge is not a speaking order and therefore, is liable to be set aside only on this ground. However, considering the fact that the appeal remained pending for six years and if the remand order is passed, it will further take a long time to hear the Writ Petition, we have taken the task upon ourselves with the assistance of the Learned Counsel for the Appellant to decide the case.

7. It is settled law that as a Government servant 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.

8. In *Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen*, , the Apex Court held as under:

...if an employee continues to be absent from duty without obtaining leave and in an unauthorised manner for such a long period of time that an inference may reasonably be drawn from such absence that by his absence he has abandoned service, then such long unauthorised absence may legitimately be held to cast a break in continuity of service.... We would like to make it clear that...there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.

9. Similarly, in *Shahoodul Haque Vs. The Registrar, Co-operative Societies, Bihar and Another*, , the Apex Court observed as under:

The undenied and undeniable fact that the appellant had actually abandoned his post or duty for an exceedingly long period, without sufficient ground for his absence, is so glaring that giving him further opportunity to dis-prove what he practically admits, could serve no useful purpose. It could not benefit him or

make any difference to the order which could be and has been passed against him. It would prolong his agony. On the view we have adopted on the facts of this case, it is not necessary to consider the further question whether any notice for termination of service was necessary or duly given on the assumption that he was not punished. We do not think that there is any question involved in this case which could justify an interference by us....

10. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action of the employee and the employer has no role in it.

11. In the State of Haryana Vs. Om Parkash and Another, , the Apex Court explained the distinction between "retrenchment" and "abandonment" from service, observing as under:

Retrenchment within the meaning of Section 2(oo) means termination by the employer of the service of the workman for any reason whatsoever. Therefore, it contemplates an act on the part of the employer which puts an end to service to fall within the definition of the expression "retrenchment" in Section 2(oo) of the Act. There was nothing of the sort in the instant case. It was the workman who ceased to report for duty therefore, this is a case in which the employer has done nothing whatsoever to put an end to his employment and hence, the case does not fall within the meaning of Section 2(oo) of the Act. Therefore, the case does not attract Section 2(oo), nor does it satisfy the requirement of Section 25-F.

12. In The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, while dealing with a similar case, the Apex Court observed as under:

It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.

13. Similar view has been reiterated in G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., .

14. In Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another, ; and Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , the Supreme Court 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 ceased 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.

15. Similar view has been reiterated in V.C., Banaras Hindu University and Others Vs. Shrikant, ; and Chief Engineer (Construction) v. Keshava Rao (2005) 2 SCC 229.

16. In view of the above, law of abandonment of service can be summarised that absence from duty is misconduct of an employee. Absence from duty for a long time may give rise to a presumption that the employee is no more interested to continue in service. It may be term as abandonment from service.

17. In the instant case, admittedly, the employee had worked up to 1.10.1994 and the transfer order dated 2.10.1994 was not allegedly complied with. Such a short period's absence cannot give rise to presumption to the abandonment of service as the employee approached the statutory authorities and a case No. 2 of 1995 was registered u/s of the Payment of Wages 15 Act. Subsequently, a reference was made to the Labour Court as I.D. Case No. 22 of 1998 and it was considered by the Labour Court by making the award.

18. In view of the above, the submissions made by the Learned Counsel for the Appellant is not worth acceptance.

19. Learned Counsel for the appellant could not furnish any explanation as the employee did not ensure compliance of the transfer order why the employer could not initiate the Departmental Proceedings against him.

20. In Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , the Apex Court in crystal clear words observed that an employee if does not join at the transferred place, exposes himself to the disciplinary proceedings for disobedience of the order. The employee cannot avoid the compliance of transfer order.

21. In Addisons Paints & Chemicals Ltd. v. Workman AIR 2001 SC 436, a similar view has been reiterated as it has been held therein that refusal to report for duty upon transfer amounts to misconduct. Even if transfer order is bad for some reason, the employee must ensure compliance of the order first and then raise the issue with the employer for redressal of his grievance.

22. In Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, , the Apex Court held as under:

...Non-compliance with the transfer order by the Plaintiff amounts to refusal to obey the orders passed by superiors for which the employer can reasonably be expected to take appropriate action against the employee concerned...it is to be considered that if the Plaintiff does not comply with the transfer order, it may ultimately lead to termination of service. Therefore, a declaration that the transfer order is illegal and void, in fact amounts to imposing the plaintiff on the defendant in spite of the fact that the plaintiff allegedly does not obey order.

23. In S.C. Saxena v. Union of India and Ors. (2006) 9 SCC 583, the Apex Court deprecated the practice of approaching the Court by the Government employees against transfer order rather joining at the transferred place and held that when the government servant without joining his duty at the new place continued to submit leave application for a long period, it would be held to be guilty of misconduct and compulsory retirement of such employee is justified.

24. In view of the above, we are of the opinion that the Departmental Proceedings should have been initiated against him. Thus, on that ground also, it is not worth acceptance that the employee did not attend the duty by joining the place of transfer.

25. In view of the aforesaid, we do not find any cogent reason to interfere with the order of the Learned Single Judge and accordingly the appeal is dismissed.

I. Mahanty, J.

26. I agree.