
(2013) 08 AHC CK 0228

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 74362 of 2005

Ravindra Nath

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 9 ADJ 458 : (2014) 2 ALJ 58 : (2014) 3 AWC 2542 : (2014) 141 FLR 494 : (2014) 1 LLN 309 : (2013) 4 UPLBEC 3409

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : Shekhar Kumar, Bhoopendra Nath Singh, A.K. Shukla and Smt. Rita Shukla, for the Appellant; V.R. Agrawal and Vivek Ratan, for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar Tripathi, J.—Learned counsel for the parties were heard and judgment was reserved. The present writ petition has been filed with the prayer to issue writ of certiorari quashing the impugned award dated 14.12.2001, Annexure 1 to the writ petition, passed in adjudication Case No. 55 of 1998 by the Industrial Tribunal, First, U.P. Allahabad published on the notice board on 4.8.2005 and further prayer is to issue writ of mandamus commanding the respondent No. 2 to reinstate the petitioner in service and give all consequential benefits with full back wages from the date of dismissal of his service.

2. There is no interim order.

3. Case of the petitioner is that petitioner was appointed on the post of Junior Technician (Instrumentation) on 1.12.1978 in the office of M/s. Indian Farmers Fertilizers Cooperative Ltd., Phoolpur, Allahabad. The respondent No. 2 is cooperative society registered under the Multi State Cooperative Society Act, 1984 and is engaged in manufacturing and marketing chemical fertilizer. The petitioner continued to work till 20.7.1997. He was never charge-sheeted and no domestic enquiry was conducted against him. However, his wife was seriously ill

and suffering from chronic disease from the year 1987 and was getting treatment in different hospitals under the different doctor of the country and her weight was reduced to 28 kg. like a child. The petitioner applied for leave from time to time and the same was granted by respondents. The petitioner was on leave w.e.f. 4.4.1994 to 20.7.1997 for treatment of his wife by different doctor at different places. The leave applications were submitted along-with medical certificate of his wife on 21.7.1997 when petitioner gave his joining to the respondent No. 2. He was informed on 21.7.1979 that his services have already been terminated. He further submitted that without giving any show-cause notice, charge-sheet, without conducting any enquiry and without giving opportunity of hearing services of the petitioner has been terminated. Neither one month notice nor salary in lieu of notice was given hence there was retrenchment of the petitioner without following the provisions of Section 6N and 25F of the Industrial Dispute Act, 1947. In spite of repeated request his prayer was not considered to reinstate. He also approached the Conciliation Officer/ Deputy Labour Commissioner, Allahabad for conciliation of the dispute for which he moved the C.P. Case No. 151 of 1997. The reply was filed on behalf of respondent No. 2. Since conciliation failed hence Conciliation Officer/Deputy Labour Commissioner, Allahabad reported the matter to the State Government for reference of Industrial Dispute to the Industrial tribunal in exercise of power u/s 4F of the U.P. Industrial Dispute Act. The matter was referred and the same was registered as Adjudication Case No. 55/98 before the Industrial Tribunal at Allahabad. After receiving the notice sent by industrial tribunal, Allahabad petitioner filed his written statement dated 9.11.1998 in which it was stated that he was appointed as Junior Technician on 1.12.1978 and he continued to work till 20.7.1997. Further, it was stated that due to very critical illness of his wife he took leave from time to time, which was approved and granted by the respondent No. 2.

4. In reply written statement was filed on behalf of respondent No. 2 and it was stated that petitioner has not reported on duty. He has abandoned the service after 9.4.1994. The copy of the letter dated 20.3.1997 was filed to show that name of the petitioner has already struck off from the records w.e.f. 31.12.1994. First time petitioner came to know when statement was filed before the State that the name of the petitioner was struck off from the roll w.e.f. 31.12.1994. He further submitted that according to witness T.D. Josef name of the petitioner was in roll till 20.3.1997. The petitioner has submitted documentary evidence before the tribunal and further request was to summon regular record from the office of respondent No. 2, which was not summoned. On 27.8.1999 the tribunal directed that employer might file service record in sealed envelop, which would be perused at the time of argument. The worker was at liberty to produce original wages slips received by him and if original was not filed photo copies would be treated as secondly evidence. Further case of the petitioner is that he was on leave since April 1994 to 20.7.1997 and the leave was granted by the office of the respondent No. 2. The documentary evidence was filed on behalf of the

petitioner in which signature were made by the respondent, concerned. However, signature of Sri K.N. Bandil, Senior Engineer and Sri R.N. Prasad, Engineer, was refused to be identified by employer witness No. 1. The application was moved by the petitioner for summoning Sri K.N. Bandil, Senior Engineer, and Sri R.N. Prasad to verify their signature before the tribunal and prayer of the petitioner was allowed on payment of one day salary of the witnesses i.e. 2,000/- and also demanded expenses for a sum of Rs. 3,000/-, which was to be deposited by the petitioner by the next date. The petitioner was directed to deposit a sum of Rs. 3,000/- by the next date i.e. on 18.6.2001. There was resolution of the representative of the tribunal and on which assurance was that no adverse order would be passed, if any representative of the parties were absent during the month of summer of June. The representative of the petitioner was out of station till 26.6.2001. Hence petitioner, who was present on 18.6.2001, gave adjournment application for adjournment of the case till 26.6.2001, however, it was rejected by the tribunal. Thereafter, an application dated 28.6.2001 was filed with affidavit to recall the order dated 18.6.2001 passed by the industrial tribunal against which objection was filed on behalf of respondent No. 2 on 2.7.2001. The Presiding Officer of the tribunal was in favour of respondent No. 2 since very beginning of the case, hence the application was also moved before the Secretary, Labour Court, Lucknow for transfer of the case from industrial tribunal Allahabad to Labour Court, Allahabad on 12.9.2000 in which comment was called for from the Presiding Officer, Industrial Tribunal. The labour Commissioner by letter dated 20.11.2002 asked the Registrar, Allahabad for transfer of the case of the petitioner from industrial tribunal to labour Court, Allahabad. Since the application was moved for transfer of the case from industrial tribunal to labour Court hence Presiding Officer made an observation that award would be against the petitioner. No proper opportunity of hearing was given whenever the representative of the petitioner was not present and the request for adjournment was rejected by the Presiding Officer. The case was heard and judgment was reserved, which was sent to the State Government for publication of the award, however, the same was remained pending for a long period, and even the application dated 21.3.2002 was moved before the labour Commissioner, Kanpur that the award given by the industrial tribunal might not be published and after hearing parties the case might be remanded, to be decided by any other Court so the justice might be done. The award was detained for about 4 years and thereafter, the order was passed on 9.8.2005 for publication of the award and the same was published on 15.9.2005. The apprehension of the petitioner was found correct and the award was passed against him. He further submitted that services of the petitioner were terminated w.e.f. 21.7.1997 when the office of the respondent No. 2 refused to permit the petitioner for joining his duty. However, subsequently, first time it was informed, after thought that the name of the petitioner has already been struck off from the roll w.e.f. 31.12.1994 and when petitioner came to know then the date of termination was got amended in place of 21.7.1997 as 31.12.1994.

5. He further contended that there is no provision of abandonment of the service. It is only retrenchment in view of the provisions of Section 2(oo) of the Industrial Dispute Act under which all the orders of the management are covered by which the services of the workmen are terminated by the employer for any reason whatsoever, except those expressly excluded in the section. Learned counsel for the petitioner further submitted that if the employee/workman was removed from service and not allowed to work due to whatever reason, that amounts retrenchment. Since there was no compliance of the provisions of Section 6N and 25F of the Industrial Dispute Act, 1947 hence the acts of the respondents are illegal, arbitrary, mala fide, which is unfair and the same is also against the principle of natural justice. He relied the following judgments in support of his contention that it was a retrenchment and there was no compliance, D.K. Yadav Vs. J.M.A. Industries Ltd., , The State Bank of India Vs. Shri N. Sundara Money, , Lakshmi Precision Screws Ltd. Vs. Ram Bahagat, , H.D. Singh Vs. Reserve Bank of India and Others, , L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another, .

6. He further submitted that in view of the aforesaid judgment u/s 2(oo) of the Industrial Dispute Act the retrenchment means the termination by the employer the services of a workmen for any reason whatsoever except which specially excluded in the section. Even if petitioner was removed from service or his name was struck off from the rolls that amounts retrenchment, hence without compliance of the provisions of Section 25F and 6N of the Industrial Dispute Act, 1947 the retrenchment of the petitioner is illegal, arbitrary and against the principle of natural justice because neither one months notice was given nor in lieu of that any salary was paid nor any compensation for retrenchment was paid. Hence the acts of the respondents are also in violation of Articles 14 and 21 of the Constitution of India.

7. Learned counsel for the respondents opposed aforesaid prayer and submitted that there was no violation of any rule because repeatedly the notice was given to the petitioner to join the services. The claim of the petitioner was considered by the service tribunal. The petitioner was neither terminated nor removed from the service. There was no retrenchment by the respondents and as such there was no question of compliance of provision of Section 25F and 6N of the Industrial Dispute Act. The petitioner himself did not join the services in spite of repeated notice and as such he himself abandoned his service. He himself was not interested to join the service, however, after a long gap he was advised to raise industrial dispute that he was not permitted to join the duty. The allegation against the tribunal is also incorrect and baseless and full opportunity was given to the petitioner. After hearing the petitioner and his representative the award was passed by the industrial tribunal. The finding recorded by the tribunal are based on material evidence placed on record before the tribunal. Petitioner never applied for leave for the period when he was absent nor shown any cause or reason for absent. He never intimated the respondents that he was absent from duty because of illness of his wife. He also contended that respondent No. 2 have

very good medical facilities for its employees and their family. The petitioner never utilised or availed the medical facilities provided by the respondent No. 2 nor produced such bill for reimbursement relating to treatment of his wife. The petitioner even before the tribunal was trying to delay the matter on one or other grounds and he was not interested in disposal of the matter at earliest. Petitioner remain absent from 8.6.1989 for which letter dated 10.8.1989 was issued when he again left the service and remain absent from 2.4.1992 telegram was sent to him on 9.4.1990, for remaining absent from 16.11.1990 notice dated 17.8.1991 was sent. He remained absent from 23.10.1990 regarding which letter was issued on 29.1.1992, when he remained absent from 4.4.1992, letter dated 4.1.1993 was sent and further when he left office and remained absent from 11.4.1994 the notice/letter dated 16.12.1994 was issued advising him to join the services by 31.12.1994 otherwise his name was to be struck off from the roll. Repeatedly the notice was given to the petitioner but time to time without any leave he remained absent. The petitioner did not join by 31.12.1994 and even after that he remained absent for a long period of about more than three and half years. According to him he came and gave letter for joining on 21.7.1997, however, with effect from that date he was removed from service. In fact he was not removed or terminated and there was no retrenchment but in view of the "Standing Order" since he remained absent for a long period and did not join even after notice/letter dated 16.12.1994 then his name stand struck off from the roll. When he came back, only the information was given. It is incorrect to show that the order was passed with effect from the back date i.e. w.e.f. 31.12.1994. The alleged medical leave were never submitted in the office and there is no receiving and no record to show that the medical leave was submitted in the office of the respondent. In fact the petitioner should have been removed from the service for repeated absence from duty, which was misconduct and it also shows that petitioner was not sincere in conducting the work. It appears that he was engaged in business of his elder son or somewhere else and just to show continuation of service he used to join the duties. He was a habitual absentee for which he was warned again and again and as such he is not entitled for any relief u/s 226 of the Constitution of India. He relied the following judgments, Managing Director, Panchganga Sahakari Sakhar Karkhana Ltd. Vs. Babasaheb Devgonda Patil and Another, , Mohd. Sagir Vs. Bharat Heavy Electricals Ltd. and Others, , Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, , Punjab and Sind Bank and Others Vs. Sakattar Singh, , Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, He also contended that since the petitioner remained absent repeatedly from a long period hence rightly his name was struck off from the roll. The industrial tribunal has rightly refused to grant any relief and pass the award after hearing the parties on the basis of evidence on record and as such no interference is required and the writ petition is liable to be dismissed.

8. Considered the submission of learned counsel for the parties. According to learned counsel for the petitioner without giving any show-cause notice or one

month salary, in lieu of the notice or any compensation for the retrenchment, petitioner was removed from service which amounts retrenchment. Hence order of termination was illegal. Case of the petitioner is that he submitted application for leave, which was allowed by the respondent but he has not placed any receiving of the leave application given in the office of respondent and any material to show that the leave application was filed. According to clause 23 of the standing order "if a workman remain absent without leave or beyond the period of leave originally granted or subsequently extended the workman shall lose his lien on the post in IFFCO and will be deemed to have "voluntarily abandoned" his employment unless

(a) He returns within ten days of the expiry of leave or extended leave or commencement of his absence, as the case may be, and

(b) gives explanation to the satisfaction of management of his inability to be present as required.

9. Case of the petitioner was that he proceeded on leave and obtained the sanction of leave in writing, which was applied by him. However, specific case of the respondent factory is that petitioner had not applied for leave but he remained absent from the duty from time to time for a long period. In the Industrial Dispute Act the abandonment of service by the employee has not been mentioned. According to provision of Section 2(oo) of the Act, 1947 retrenchment means "the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section". Section 2(oo) defines "Retrenchment means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include (a) voluntary retirement of the workman, or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (c) termination of the services of a workman on the ground of continued ill health.

10. In case of D.K. Yada v. M/s. J.M.A. Industries Ltd. (supra) it was held that "fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected should be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence." It was held that the principle of natural justice are part of the Article 14 and the procedure prescribed by law must be just, fair and reasonable. All matter relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution. The "striking off" the name of workman for absence of leave itself amounted to retrenchment. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of

justice. These rules operate in the area not covered by law validly made or expressly excluded. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principle of natural justice. The principle of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies. It was held by the Apex Court "the principles of natural justice must be read into the standing order No. 13(2)(IV) otherwise it would become arbitrary, unjust and unfair violating Article 14."

11. In view of the judgment of the Apex Court a reasonable opportunity has to be given to the employee and the authority concerned is expected to act fairly, justly, reasonably and impartially. The procedure adopted must be just, fair and reasonable in view of the particular facts and circumstances of the case. It is a fundamental rule of law that no decision should be taken which would affect the right of any person without first being informed of the cause and without giving reasonable opportunity of putting forward his/her case.

12. In case of *State Bank of India v. Shri N. Sundara Money* (supra) the Apex Court held that the termination for any reason whatsoever are the key words. Retrenchment means "to end, conclude, cease". The definition of retrenchment according to Section 2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill health.

13. In case of *H.D. Singh v. Reserve Bank of India and others* (supra) it was held that the striking of name of workman from roll amounts to retrenchment, who have put in service of more than 240 days in the preceding 12 months and the same would be invalid for non observance of requirements of Section 25F of the Industrial Dispute Act.

14. In case of *Robert D'souza v. Executive Engineer, Southern Railway and another* (supra) the Hon"ble Supreme Court held that the termination of services of unauthorised absence from duty amounts retrenchment within the meaning of Section 2(oo) and so compliance of Section 25F of the Industrial Dispute Act must be satisfied.

15. In the matter in between *Punjab and Sind Bank and others v. Sakattar Singh* (supra), the controversy was considered by the Bench of three Hon"ble Judges of the Supreme Court. There was a bipartite settlement according to which in the event an employee absents himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended the

management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duty, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the time fixed in the said notice. In the event of the employee giving a satisfactory reply, he will be permitted to report for duty. Thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service. Under this rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job any more and will stand retired from service. The order of termination effected by means of striking out his name from the muster roll of the appellant-Bank, which was challenged. He was working as clerk-cum-cashier w.e.f. 18.12.1978. He claimed that on account of very serious eye ailment he had been taking leave off and on and he had such ailment even in the year 1993-94 and after obtaining a fitness certificate he submitted his joining report to the Branch Manager on 4.4.1994 which was not accepted by him and, therefore, he submitted an application to the higher authorities of the Bank. In the meanwhile, a notice dated 12.3.1994 was given to the employee, who was asked to explain his unauthorised absence after the expiry of sanctioned leave. He appeared before the competent authority to permit him to join duty but no order was passed. On the other hand the order dated 18.4.1994 came to be passed informing him of the termination of his services in the manner stated earlier. According to case of the bank Sakattar Singh proceeded on leave for three days commencing on 16.8.1993, who did not report for duty although communications dated September 4, 1993, December 17, 1993 and April 15, 1994 were sent to him and he was called upon to resume his duty. It was further pleaded that he had remained unauthorisedly absent for a period of 190 days and, therefore, made himself liable to be removed from the rolls of the Bank in terms of para 17 of the Bipartite Settlement and para 522 of the Shastri Award. In that case the High Court took the view that the respondent had put in 16 years of service and his services could not have been dispensed with except after inquiry consistent with the principles of natural justice and the action of bank in terminating the services of the respondent is based on a mis-conduct in respect of which no inquiry has been held though it was imperative for the banks to have served a charge-sheet to him with an opportunity to file his reply. The High Court declared that the order striking out the name of the respondent from the rolls of the Bank was a nullity due to the patent violation of the principles of natural justice and the order was quashed. Against which special leave to appeal was filed by the Bank. The Apex Court allowed the appeal and set aside the order passed by the High Court. It was held that the High Court had proceeded on an erroneous basis of non-compliance with the principles of natural justice, whereas the true content of the principles of natural justice should have been borne in mind, particularly

when there was an agreement between the parties as to the manner in which the situation should be dealt with and the consequence that would ensue thereof.

16. In the present case even earlier the petitioner remained absent from month of April 1988 to March 1989 for 115 days, April 1989 to March 1990 272 days, April 1990 to March 1991 220 days, April 1991 to March 1992 341 days and further w.e.f. 4.4.1992 to December, 1992 for 266 days. When he was absent in 1989 the letter dated 10.8.1989 was issued, when he was absent from April 1990, telegram dated 2.4.1990 was issued and when he was absent in the year 1990-91 letter dated 17.8.1991 was sent, when he was absent from 23.10.1990 letter dated 29.1.1992 was sent by the respondent employer and further when petitioner remained absent w.e.f. 4.4.1992 notice/letter was issued to the petitioner at his address on 4.1.1993. However, he was permitted to join the duty. He was further absent after 4.4.1994. When he did not reported for a long period then letter/notice dated 16.12.1994 was sent on his address, asking him to report for duty by 31.12.1994, otherwise it would be deemed that he was not interested to join the duties and his name would be "Struck off" from the roll.

17. According to clause 23 of standing order "if a workman remains absent without leave or beyond the period of leave originally granted or subsequently extended, he shall lose his lien, on the post in IFFCO and will be deemed to have voluntarily abandoned his employment unless.

(a) He returns within ten days of the expiry of leave or extended leave or commencement of his absence, as the case may be and

(b) gives explanation to the satisfaction of management of his inability to be present as required.

Note:

I. If a workman returns within ten days from the date of the expiry of his leave or from the date of commencement of his absence but fails to give a satisfactory explanation for such unauthorised absence he will lose his lien on the post and will be deemed to have voluntarily abandoned his employment.

II. If a workman's application for leave is not sanctioned as provided under these standing orders he will be treated as absent without leave for this purpose of this clause.

18. According to the petitioner application were given for grant of medical leave but no receiving was shown. The alleged application for medical leave appears not to have been given because any reliable material was not produced by the petitioner to show that leave application was given and leave was granted. He not only remained absent w.e.f. 4.4.1994 to 31.12.1994 but even earlier he remained absent without leave. Further inspite of notice petitioner failed to report for duty by 31.12.1994 and even after that he remained absent upto 20.7.1997. Hence in view of the notice/letter dated 16.12.1994 his name stand struck off from the roll.

19. There is no provision and definition of abandonment in the Industrial Dispute Act. In view of definition of Section 2(oo) every termination, on any reason, amounts to retrenchment. However, while giving the definition of retrenchment u/s 2(oo) of the Industrial Dispute Act the retrenchment means the termination by the employer of the service of workman for any reason whatsoever otherwise the termination by way of punishment inflicted by way of disciplinary action; or termination of the service on the ground of continued ill health. In the present case petitioner remained absent on the ground of ill health of his wife without sanctioned leave or any application and also failed to prove that application for leave was given in the office. He remained absent for a long period of about more than three years because he was absent after 4.4.1994 and admittedly he reported to join in July, 1997 though notice was given to him to join the service by 31.12.1994 otherwise it would be deemed that he was not interested to join the service and his name would be struck off from the roll.

20. Principle of natural justice cannot be one sided and to grant liberty to the workman to report for work whenever he likes and liberty to remained absent for a long period without leave and even without giving reasonable and satisfactory explanation. If workman remain absent for a long period without valid reason which shows his intention to relinquish the job completely then it amounts abandonment of service. Abandon means to leave completely, to relinquish, to renounce, to give up all concern in something. Abandonment means relinquishment of claim or interest, voluntary relinquishment. Temporary or short absence, or absence on reasonable ground or beyond control is not ordinarily sufficient to constitute as abandonment of office. There must be total or complete giving up of duties so as to indicate an intention to relinquish the office and not to resume the office. Absence of more than three years even after notice dated 16.12.1994, it would be deemed that petitioner was not interested to join the duties, due to reasons best known to him. He might have been engaged in business of his son or in any other work, because there was Annant Sahkari Samiti Ltd. in the name of his son Anant, engaged in property dealing business.

21. The "abandonment" was considered by the Supreme Court in case of The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, . Paragraph 5 and 6 are quoted herein below:

5. Mr. Sastri for the appellant contends that the case of Venkatiah falls squarely within the provisions of Standing Order 8(ii) and the High Court was in error in holding that the decision of the appellant in refusing to condone the absence of Venkatiah was either unfair or improper, or that it contravened the provisions of Section 73 of the Act. Let us first examine Standing Order No. 8(ii) before proceeding any further. The said Standing Order reads thus: "Absent without Leave: Any employee who absents himself for eight consecutive working days without Leave shall be deemed to have left the Company's service without notice thereby terminating his contract of service. If he gives an explanation to the satisfaction of the management, the absence shall be converted into leave

without pay or dearness allowance.

Any employee leaving the Company's service in this manner shall have no claim for re-employment in the Mills.

But if the absence is proved to the satisfaction of the Management to be one due to sickness, then such absence shall be converted into medical leave for such period as the employee is eligible with the permissible allowances.

This Standing Order is a part of the certified Standing Orders which had been revised by an arbitration award between the parties in 1957. The relevant clause clearly means that if an employee falls within the mischief of its first part, it follows that the defaulting employee has terminated his contract of service. The first provision in clause (ii) proceeds on the basis that absence for eight consecutive days without leave will lead to the inference that the absentee workman intended to terminate his contract of service. The certified Standing Orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service. 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. But where parties agree upon the terms & conditions of service and they are included in certified Standing Orders, the doctrines of common law or considerations of equity would not be relevant. It is then a matter of construing the relevant term itself. Therefore, the, first part of Standing Order 8(ii) inevitably leads to the conclusion that if an employee is absent for eight consecutive days without leave, he is deemed to have terminated his contract of service and thus relinquished or abandoned his employment.

6. The latter part of this clause, however, provides that the employee can offer an explanation as to his absence and if his explanation is found to be satisfactory by the management, his absence will be converted into leave without pay or dearness allowance. Now this clause is in substance a proviso to its first part. Before effect is given to the inference of relinquishment of service which arises from the first part of the clause, an opportunity is given to the employee to offer an explanation and if the said explanation is treated as satisfactory by the management, the inference of termination of contract of service is rebutted and the leave in question is treated as leave without pay or dearness allowance. This latter clause obviously postulates that if the explanation offered by the employee is not found to be satisfactory by the management, the inference arising from the first part prevails and the employee shall be deemed to have terminated his contract of service with the result that the relationship of master and servant

between the parties would be held to have come to an end. With the remaining part of the said Standing Order we are not concerned in this appeal.

22. In view of the standing order and considering the definition of Section 2(oo) of the Industrial Dispute Act and the facts and circumstances of this case, the judgments relied by the counsel for the petitioner are not applicable in the present case. When petitioner reported to join duty on 21st July 1997 then he was only communicated that his name had already been struck off from the roll w.e.f. 31.12.1994. The order for termination was not passed with effect from back date. As far as some payments are concerned, there was already explanation that if there was excess payment, the same was deducted and if there was some arrear or any other payments those payments are being made to the employees even after they left the service or they remained absent or they are on leave. Since some dues were paid hence he was shown to be in service, which is against the facts on record. Admittedly he was absent since 9.4.1994 and reported on 21.7.1997. Hence there is no violation of principle of natural justice because even earlier repeatedly opportunity was given and lenient view was taken by permitting him to join service. However, subsequently, when he again remained absent after 9.4.1994 and by letter/notice dated 16.12.1994, there was opportunity to join the services by 31.12.1994 but he did not report to join the services. He did not give any explanation regarding his absence except that wife was ill and under treatment. He came after more than three years hence he had voluntarily relinquished the office and was not interested to join the duty. In view of the aforesaid discussion, considering the facts, there is no illegality in the order of the industrial tribunal. Accordingly, present writ petition being devoid of merit is hereby dismissed. No order as to costs.