

**(1996) 09 AP CK 0089**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 1653 of 1991**

T. Jagadiswara

APPELLANT

Vs

The Manager, The Madanapalli Spinning Mills and Another

RESPONDENT

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**Date of Decision :** 04-09-1996

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2

**Citation :** (1996) 4 ALD 44 : (1996) 3 ALT 1086 : (1996) 2 APLJ 300 : (1996) 1 APLJ 300

**Hon'ble Judges :** S.R. Nayak, J

**Bench :** Single Bench

**Advocate :** E. Kalyan Ram, for the Appellant; V. Venkataramana and V. Srinivas, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.R. Nayak, J.—This writ petition is directed against the award dated 13-9-1990 in Industrial Dispute No. 196 of 1988 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur holding that the petitioner himself abandoned his post with effect from 13-6-1987.

2. Few facts which are relevant to be noticed for the purpose of disposal of this writ petition are stated briefly as under:-

The petitioner joined the respondent-mill as a Trainee-workman in the month of June, 1976 and his services were regularised in 1978. When he was on night duty on 23-7-1984, he fell down due to physical fatigue, and became unconscious. The petitioner was removed to the E.S.I. Hospital at Madanapalle, and on the advice of the Doctor therein, he was further removed to E.S.I. Hospital at Adoni for treatment. After taking the treatment the petitioner rejoined the mill after producing the medical certificate issued by the Doctors at Adoni. Again when he was on duty on 3-5-1987 in the night shift, he suffered epileptic attack. He was first treated in the local E.S.I. Hospital, and on the

advice of the Doctor therein he was subsequently removed to S.V.R.R. Hospital, Tirupati, said to be a Government Hospital. The petitioner took treatment in that Hospital between 5-6-1987 and 13-6-1987, and he was discharged from the Hospital on 13-6-1987. The Superintendent of the said Hospital issued certificate dated 13-6-1987 certifying that the petitioner was in good health and he could attend to the duty. Armed with this certificate, the petitioner made a representation to the first respondent to take him into duty. The first respondent did not permit the petitioner to join the duty; on the other hand, a show-cause notice was issued on 23-7-1987 calling upon the petitioner to give his explanation for alleged epilepsy. The petitioner offered his explanation on 30-7-1987 pointing out that he was in good health, and he suffered epilepsy only for a short period. It seems from the records that the management conducted an enquiry on 9-8-1987. After this enquiry, on 6-10-1987 the General Manager of the respondent-mill in his letter required the petitioner to produce the fitness certificate issued by the Medical Board of E.S.I. Corporation. The petitioner accordingly made representations dated 10-10-1987 and 20-11-1987 both addressed to the Regional Director, E.S.I. Hospital, Hyderabad requesting the latter to examine him and issue certificate. There was no reply from the Regional Director except issuing acknowledgment for receiving the representations. However, one Mr. C.P. Madhavan, Manager of the local office of E.S.I. Corporation at Tirupati sent a letter dated 14-12-1987 to the petitioner, which reads as under:-

"With reference to your representation cited above, I have to inform you that the Medical Board under the ESI Act is constituted for the purpose of assessing the loss of earning capacity arising out of Employment Injury cases and the functions of certifying the Insured Persons' permanent physical fitness for the continuity in employment etc. are beyond its purview. In case you need any further treatment including hospitalisation, you may contact the Medical Officer, ESI Dispensary, Madanapalle, who is the appropriate authority to arrange for your treatment and to issue necessary medical certificate to you. During the course of my enquiry conducted at the M.S. Mills on 11-12-1987, it was revealed that you were allowed to join duty after the expiry of the spell of your sickness from 6-5-1987 to 16-6-1987 on the basis of the fitness certificate dated 16-6-1987, issued by the IMO, ESI Dispensary, Madanapalle and that the mill management after conducting an enquiry into your case had later advised you to abstain from work as a precautionary measure in view of the danger involved in the employment of a person who is prone to frequent attacks of epileptic fits, in the factory premises. Thus, the course or action adopted by the mill management in your case does not warrant the interference of the ESI authorities u/s 73 of the ESI Act.

Since the Regional Director, ESI failed to examine the petitioner and issue certificate demanded by the management, and since the management refused to take the petitioner into service, the petitioner instituted I.D. No. 196 of 1988 before the Labour Court u/s 2A of the Industrial Disputes Act, 1947, contending

that the act of the management refusing him to take into duty tantamounted to unlawful termination of service, and seeking the reliefs of reinstatement with continuity of service and backwages. The claim of the petitioner was contested by the management by filing counter claim statement. In the counter claim statement, among other things, the management contended that it never terminated the services of the workman, and on the other hand, the workman himself abandoned the job.

3. The learned presiding officer of the Labour Court after appreciation of evidence placed before him came to the conclusion, that the petitioner himself abandoned the job with effect from 13-6-1987, and it was not a case of termination of his services by the management. In view of that finding, the Labour Court refused to grant any relief to the workman. Hence this writ petition by the workman.

4. Heard learned Counsel for the parties and perused the impugned award.

5. The undisputed facts are: The petitioner after taking treatment for epilepsy in the S.V.R.R. Hospital, Tirupati during 5-6-1987 and 13-6-1987 was discharged from the Hospital. The Superintendent of the said Hospital also issued the medical certificate dated 13-6-1987 certifying that the petitioner was in good health, and he could attend to the duty. When this certificate was produced before the management with a request to permit the petitioner to resume the duty, the management refused to take him into duty on the ground that he was suffering from epilepsy, and if he was permitted to resume the duty it might result in "dangerous accident" and to avoid "bodily injury" to the petitioner himself. It is also admitted fact that in pursuance of the show-cause notice dated 23-7-1987, and after holding enquiry on 19-8-1987, the management did not take a final decision to terminate the services of the workman on medical ground. On the other hand, the management wanted a certification from the Medical Board of the E.S.I., that is why, the petitioner was directed to obtain physical fitness certificate from the Medical Board of E.S.I. The letter sent to the petitioner by Mr. C.P. Madhavan, Manager of the local office of E.S.I. Corporation at Tirupati discloses that when he made the enquiry with the management, he was told that the petitioner was already permitted to attend to the duty on the basis of the certificate issued by the I.M.O., E.S.I. Dispensary, Madanapalle, and after the management of the mill conducted the enquiry, the petitioner was advised to abstain from duty as a precautionary measure, in view of the danger involved in the employment of the petitioner. There is nothing on record to show that after the petitioner made a representation to the Regional Director, E.S.I., the Regional Director taking any steps to examine the petitioner and issue certificate as demanded by the management. The evidence on record and the documents produced before the Labour Court and this Court establish three facts, over which there cannot be any controversy.

(1) The petitioner wanted to join the service after he took treatment at Tirupati between 5-6-1987 and 13-6-1987.

(2) The Management refused to take him into duty.

(3) The Regional Director, E.S.I, did not take any steps in pursuance of the representation of the petitioner to examine the petitioner and issue necessary certificate.

In the light of these undisputed facts, it cannot be said that the petitioner himself abandoned the job. It is hardly necessary to state that where the abandonment is pleaded, it is necessary to prove that the abandonment is voluntary and wilful. The said element is totally absent in the present case. Therefore, in my considered opinion, the learned Presiding Officer of the Labour Court is not correct in recording the finding that the petitioner himself abandoned the job with effect from 13-6-1987. It is a clear case where the management refused to take the petitioner into service despite the latter's request, without taking a decision to terminate his services though such a course was open to the management having regard to the exception contained in Clause (c) to the definition of the term "retrenchment" in Section 2(oo) of the Industrial Disputes Act, 1947. The erroneous finding is recorded by the learned presiding officer without proper consideration to the aforementioned three basic facts. Therefore, a case is made out for interference.

6. The writ petition is allowed, and the impugned award is set aside. It is declared that the petitioner should be deemed to have been in service throughout, and the petitioner stands reinstated into the service with all consequential benefits. However, this order shall not come in the way of the management if they are so advised, in taking necessary steps to terminate the services of the petitioner on the ground of continued ill-health in accordance with law. It is also made dear that before such action is initiated, and a decision is taken, it is permissible for the management to direct the petitioner not to attend to the duty if the management is of the opinion that permitting the petitioner to continue in the actual job would jeopardise the interest of the mill or the safety of the petitioner himself. No costs.