

(2010) 05 RAJ CK 0059
In the Rajasthan High Court

University of Jodhpur

APPELLANT

Vs

Dr. Gopal Krishan Lohra
 Dr. Bhawneshwar Derasari Vs
University of Jodhpur

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311

Citation : (2010) 05 RAJ CK 0059

Hon'ble Judges : Dinesh Maheshwari, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—These two intra-court appeals, directed against the same order dated 27.03.1992 whereby the learned Single Judge of this Court has allowed the writ petition (CWP No. 461/1983) preferred on behalf of the contesting respondent Dr. Gopal Krishan Lohra (the writ petitioner), involving similar questions on the same set of facts, have been considered together; and are taken up for disposal by this common judgment.

2. By the order impugned, the learned Single Judge has upheld the challenge to the order dated 20.10.1982 (Annex.15) whereby the appellant-University of Jodhpur (now Jai Narain Vyas University) had terminated the services of the writ petitioner from the post of Medical Officer pursuant to the resolution dated 09/10.10.1982 (Annex.14) as adopted by its Syndicate essentially for the reason that the writ petitioner failed to report on duty after the expiry of the period of extra-ordinary leave; and, while quashing the aforesaid resolution and the termination order and while directing that the period of the writ petitioner's absence from duty from the date of termination until the date of reinstatement shall be considered extraordinary leave without pay, the learned Single Judge has held him entitled to the benefit of continuity of service but without effect on the employment of the other appellant Dr. Bhawneshwar Derasari on the post of Medical Officer.

3. Shorn of unnecessary details, the facts, events, and background aspects relevant for the present purpose could be noticed thus: By an order dated 11.01.1974, the writ petitioner was appointed as Medical Officer in the appellant-University; he joined as such on 16.01.1974; and was confirmed in his appointment by the order dated 20.01.1975. The writ petitioner had applied for foreign assignment and his selection thereto was conveyed by the Government of India in its Ministry of Home Affairs under the communication dated 26.10.1978 (Annex.R/1); and, by the order dated 07.11.1978 (Annex.R/3), the appellant-University granted him extra-ordinary leave without pay for two years from the date he was relieved with permission to take up the assignment in Iran. However, the writ petitioner did not avail the leave in pursuance of the said order Annexure-R/3.

4. On the other hand, the writ petitioner applied for and was granted leave by the appellant-University to pursue his post graduation course by an order dated 30.11.1979 (Annex.3) wherein the purpose of leave was stated in the following terms: "to do P.G. course of D.V.D. at Rohtak to join elsewhere".

5. In a parallel chain of events, by an order dated 03.09.1979 as issued by the Director, Medical and Health Department, the writ petitioner came to be appointed as Civil Assistant Surgeon (C.A.S.) with the Government of Rajasthan after selection from the Rajasthan Public Service Commission. Admittedly, the writ petitioner joined with the Government of Rajasthan as C.A.S. on 01.12.1979. According to the petitioner, "after joining as aforesaid he proceeded on leave as he was to further pursue post-graduation course".

6. Then, the Assistant Registrar (Establishment Branch) of the appellant-University issued a No Objection Certificate (NOC) on 28.01.1980 (Annex.4) conveying that the University had no objection in the writ petitioner taking up assignment in Iran. It appears that the writ petitioner proceeded for his Iran assignment in the month of May 1980; and, according to the writ petitioner, he did so "after resigning the Government job of C.A.S. on 12.5.1980".

7. While continuing with his assignment in Iran, the writ petitioner applied to the appellant-University for extension of his leave; and, by the letter dated 12.01.1982, the Registrar of the University conveyed extension of his extra-ordinary leave for a period of six months w.e.f. 29.11.1981. According to the petitioner, he sought further extension of leave under the communication dated 14.05.1982 and under other alleged communications dated 20.06.1982, 15.07.1982 etc. and under the telegram dated 20.07.1982. However, the appellant-University, by way of the telegram dated 21.07.1982 (Annex.12), asked the writ petitioner to "join duty positively by first week of August".

8. The petitioner having not joined and his leave having not been extended, the Syndicate of the appellant University proceeded to adopt the questioned resolution dated 09/10.10.1982 to the effect that the services of the petitioner be terminated; and consequent thereto, the impugned termination order dated

20.12.1982 came to be issued. It appears further that on 22.10.1982, the University proceeded to issue an advertisement (Annex.17) inviting applications for various posts including the post of Medical Officer.

9. In the backdrop of the aforesaid facts and events, the writ petition wherefrom these intra-court appeals arise was filed on behalf of the writ petitioner Dr. Gopal Krishan Lohra by his power of attorney holder, father, Shri M.K. Lohra on 14.02.1983 seeking to question the said resolution dated 09/10.10.1982 (Annex.14), the order dated 20.10.1982 (Annex.15), and the advertisement dated 22.10.1982 (Annex.17) with the submissions, inter alia, that the order in question was received by the petitioner in Iran and the same was sent by him to his father along with special power of attorney to prosecute the legal remedy in this behalf.

10. Assailing the aforesaid actions of the appellant-University, the grounds were stated in the writ petition, inter alia, to the effect that it was entirely unjustified for the Syndicate to have adopted the resolution for termination of the services of the petitioner though he had not completed even three years in the foreign assignment and when in view of the other resolution adopted by the Syndicate, there was no occasion for the University to decline him further leave; that the petitioner was never served with any notice of penal consequences and he was justified in continuing with his assignment looking to the past practices; that termination of services of the petitioner in the manner brought about was violative of the principles enshrined in Article 311 of the Constitution of India and so also the principles of natural justice; that the reasons suggested in the resolution about essential nature of medical services were rather of misnomer and deputation to the developing countries were made on Government to Government basis in public interest. The petitioner also referred to several instances of the Government employees and so also the University employees who were granted extra-ordinary leave for longer period and referred to the resolution dated 28.04.1982 as adopted by the Syndicate whereby leave could be granted upto a period of five years.

11. It was averred in the writ petition regarding the other appellant Dr. Bhawneshwar Derasari that he was appointed as Medical officer as a leave substitute w.e.f. 04.09.1979 and was continuing as such but explanatory note of the aforesaid agenda item No. 28 of the meeting dated 09/10.10.1982 made it clear that the said incumbent had been given assurance by the then Vice-Chancellor for permanent absorption. It was alleged that termination of services of the petitioner was for collateral purpose so as to absorb the said other incumbent; and the advertisement was that of an empty formality.

12. In its reply to the petition, the appellant-University though did not dispute the fact of giving NOC aforesaid but alleged that the petitioner sought leave to do his post graduation course and never stated that he wanted to join C.A.S. in the State service; and, according to the appellant, if the petitioner joined the State service, it was without notice to the University and wholly unauthorised. It was

further submitted that an employee under the University being not a civil servant of the Union or of the State, was not entitled to the protection under Article 311 of the Constitution of India; that the relationship between the petitioner and the University of Jodhpur being contractual in nature, no petition under Article 226 was maintainable and the only remedy for the petitioner was for claiming damages by filing a civil suit. It was further contended that the order Annexure-15 was not punitive in nature but was that of termination simpliciter as a result of the petitioner not joining the duties in terms of the telegram dated 21.07.1982; and that there being no specific rules prescribed for holding of an inquiry before passing of termination order, the order impugned could not be held violative of the principles of natural justice. It was yet further contended that the grant of leave upto 5 years was discretionary and not as of right and the same was declined in the case of petitioner because the absence of the Medical Officer had been against public interest.

13. The University further contended that taking up of foreign assignment by the petitioner was purely for personal amelioration, at the cost of public interest of rendering services to the local people and therefore, if the leave had not been extended in the case of the writ petitioner and, as a result of his not joining the duty, if permanent employment was being offered to another person, no cause of justice could be held suffering so as to warrant invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India. It was also contended that the petition involved disputed questions of facts inasmuch as the receipt of letters seeking extension of leave was very much in dispute; that the petition as filed was not maintainable when not supported by an affidavit of the petitioner himself; and that the petitioner was guilty of concealment of material facts. The other appellant also filed a separate reply to the writ petition justifying the order passed against the writ petitioner; and referred to the various instances where the services were terminated for the person concerned not joining despite refusal of leave.

14. The learned Single Judge of this Court, while dealing with the writ petition in the impugned order dated 27.03.1992, observed in the first place that though the provisions contained in Article 311 of the Constitution of India did not apply in terms to the writ petitioner but then, the University being a creature of the Statute, having been established under the University of Jodhpur Act, 1962 ("the Act of 1962"), owed a duty to act fairly, justly and in public interest; and was amenable to Article 226 of the Constitution of India if its action could be held arbitrary and unreasonable and also if its actions were held to be in prejudice to any statutory duty. The learned Judge held that the employment of the writ petitioner was not a case of private contract; and the writ petitioner was, undoubtedly, an officer of the University, his appointment being under the relevant statutory provisions of the Act of 1962 and the Rajasthan University Teachers and Officers (Special Conditions of Service) Act, 1974. The learned Judge referred to Section 35 of the Act of 1962 and Ordinance 320 and pointed out that termination of service could only be brought about as per the provisions

contained therein; and while finding that no inquiry was held in the case of the writ petitioner, held as under:

It is not disputed that no inquiry of any nature whatever was held before passing resolution Ex.14 and imposing penalty vide Annx.15. The impugned order undoubtedly has been passed without following the principles of natural justice. Thus, the termination order Annx.14 and Annx.15 are clearly in violation of the statutory duty cast upon the University of Jodhpur to hold an inquiry before terminating the services of the petitioner.

15. The learned Single Judge further observed that even if the agreement was not statutory in character and viewing the case as of pure contractual matter between the University and the writ petitioner, the requirements of Article 14 of the Constitution of India extended even thereto; and referred to the principles enunciated in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, The learned Judge found the action of the appellant-University unsustainable for violation of the principles of natural justice while saying,-

The facts which are not disputed before me are that the termination of petitioner's service was on charge of disobedience and/or wilful absence from duty and that such termination was brought about without affording any opportunity in any manner to the petitioner. The act was clearly in breach of elementary principles of natural justice. An action which does not conform to principles of natural justice, where adherence thereto is not excluded, clearly suffers from vice of arbitrariness, being violative of principles of natural justice and can not be sustained.

16. The learned Single Judge further noticed and rejected the contentions on behalf of the University that grant of leave was not as a matter of right, that the University was within its right to refuse further extension of extra-ordinary leave, and that on the petitioner failing to resume his duties despite such refusal, the University was justified in terminating his services. The learned Single Judge observed that such could not be accepted as abstract proposition; that the University was not absolved from the duty to act fairly and adherence to rules of natural justice was inherent in the duty to act fairly. The learned Judge said that the condition of employment as prescribed through agreement required the University to hold investigation into the alleged misconduct of disobeying the orders and over-staying on deputation without leave being sanctioned; and, with reference to the decision of the Hon'ble Supreme Court in the case of Jai Shanker Vs. State of Rajasthan, observed that even where the relevant rules prescribe automatic cessation of employment on over-staying the leave, an opportunity must be given to the person concerned against whom such an order is proposed.

17. Then, the learned Single Judge rejected the contention of the appellants that the petitioner had taken foreign assignment for his personal amelioration and better advancement and hence, had no equity in his favour while observing,-

As I have discussed above, the very fact that the foreign assignment is channelled through F.A.S. and External Affairs Ministry is deeply involved in rendering all necessary assistance for betterment of diplomatic mission as well as for the betterment of foreign exchange. The taking up of foreign assignment is not merely for personal amelioration but is also in public interests. What has been considered to be in public interest by framing the policy by Union of India which incidentally also gives chances to amelioration of public servant, the incumbent cannot be deprived of the same by calling it abhorrent by the statutory authority like University of Jodhpur. As a matter of fact, so long as the F.A.S. approves all further extensions of deputation, the Indian employer has no discretion to refuse extension of leave as it will be contrary to the spirit of diplomatic mission and contrary to public interest. The very fact that in taking of foreign assignment, two important ministries of Central Government are involved, does not leave the matter of deputation to parent employer and employee alone. No attempt has been made by the University to know from F.A.S. department of Home Ministry of Government of India as to whether petitioner has informed about renewal of his contract to Indian Embassy....

18. The learned Judge also referred to the guidelines issued by the Government of India providing for keeping lien on the post in case of foreign assignments for two years extendable to five years and observed that extension of foreign assignment for a period of 5 years had been considered to be matter of routine and it was not disputed that the University had also been granting extra-ordinary leave upto a period of five years in the matters of taking foreign assignments. The learned Judge observed that no reason had been assigned for excluding the petitioner from the benefit of extending 5 years period for extra-ordinary leave; and the only ground suggested was that there being only one post of Medical Officer, the University could not afford to keep services of the only incumbent available on deputation for a long period. The learned Judge rejected such ground as fallacious with the observation that the University had made arrangement for keeping the medical services going on by appointing a person against leave vacancy and then, it was not the case of the University that successor in the office of the petitioner would not be entitled to foreign assignment even for two years. The learned Judge also observed that that the medical service was not a preserve of the University alone; rather the doctors employed in Government of Rajasthan, Central Government and other semi-Government organizations were allowed to take foreign assignment for a period of 5 years or more in many cases.

19. On the considerations and for the reasons aforesaid, the learned Single Judge proceeded to allow the petition and issued the writ as noticed supra. Aggrieved, the respondents in the writ petitioner, the University and the said other incumbent on the post of Medical Officer as leave substitute, have preferred these intra-court appeals.

20. It may be noticed that immediately after passing of the order dated

27.03.1992, the writ petitioner submitted a so-called joining report to the appellant-University on 28.03.1992. However, in the stay application moved in the appeal preferred on behalf of the University, a Division Bench of this Court considered all the facts and circumstances of the case and found such so-called joining of no bearing with the observations that the learned Single Judge having not ordered reinstatement with immediate effect, the University was required to pass an order for the purpose that had not been done. The Division Bench further observed that the petitioner was not going to suffer irreparable injury if not allowed to join duty particularly in view of the contents of the affidavit filed in the writ petition on 11.02.1992 wherein he admitted being in temporary employment and being ready to forgo the same as soon as reinstated with the University. The Division Bench found prima facie good grounds for staying the operation of the impugned order and hence, stayed the same until disposal of the appeal. At this juncture, the contents of paragraph 3 of the said affidavit filed by the petitioner in the writ petition could be usefully noticed as under:

That I have been persuing the present case and have also filed applications for early hearing of the writ petition. I have come back to India somewhere in June, 1990 and thereafter I have not been able to get any permanent/regular employment in any Government Institution. At present I have only a temporary engagement which I can forgo as soon as I am reinstated with the University.

21. Before proceeding further, appropriate it shall be to take note of certain other subsequent events too. On 28.10.1996, the writ petitioner filed an affidavit in the appeal preferred by the University with the submissions, inter alia, that he served with Oil and Natural Gas Commission for 3 months from February 1993 and then, he joined State services as Medical Officer on ad hoc basis in the month of April 1993; that he was keen to join the University and was prepared to resign State services as and when necessity arise. On behalf of the appellant-University an affidavit in response was filed stating, inter alia, that while obtaining leave on 30.11.1979, the petitioner did not disclose that he had been selected by the Government of Rajasthan; and he joined the State services without the knowledge of the University; and that he has presently joined the service with the Government in continuation of his earlier service which shows that he had a permanent lien with the Government and did not resign as alleged. The petitioner filed an affidavit in rejoinder to such submissions and pointed out that he came to be selected on 30.03.1993 by the Government temporarily and it was only by the order dated 26.08.1994 that he came to be appointed on substantive basis; and it was wrong to say that he was continuing with reference to his earlier engagement i.e., the one pertaining to his joining on 01.12.1979.

22. A synopsis has also been submitted on behalf of the contesting respondent-writ petitioner on 16.10.2009 in the appeal referring to the facts and events and stating, inter alia, that he joined as C.A.S. in the State of Rajasthan on 01.12.1979 and after serving for some time he resigned from the State services by his letter dated 12.05.1980; and "he served the State only for a short while

i.e., about 5 months". As per the contents of the said synopsis, the respondent was going to retire from the service on 28.02.2010; and, according to the respondent, if forced to remain in State service, he shall be getting pension for a short period of about 16 years and on the other hand, if retiring from University, he shall be getting pension on his total length of service, which will be more than 35 years.

23. We may also point out that by the time these appeals were finally heard by us, the writ petitioner had already reached the age of superannuation and it was sought to be contended on behalf of the appellants that the entire lis has been rendered redundant. Such submissions were put to stiff opposition by the learned Counsel for the contesting respondent and, with reference to several decisions, it was urged that merely with passage of time, this matter cannot be considered redundant or infructuous; and the respondent cannot be made to suffer only because the Court stayed the operation of the impugned order. It does not appear necessary to dilate further on these submissions as we have heard the Counsel for the parties on the merits of the case; and propose to deal with the matter on its merits.

24. The learned Counsel for the appellant-University contended that the writ petition as presented was not even maintainable for having been filed by the father of the writ petitioner as his power of attorney holder; and has referred to the decision by the learned Single Judge of this Court in the case of Dr. (Mrs.) Daksha Sankhla v. Jai Narain Vyas University, Jodhpur and Ors. RLW 2001 (2) raj 1035. The learned Counsel further contended that the respondent had been guilty of fraudulent conduct and of concealment of material facts when he did not inform the University of having joined the State services; and that his allegation of resignation from State services has not been established on record; and hence, on this count alone, the petition ought to have been dismissed. The learned Counsel submitted that even under the Rajasthan Service Rules, a Government servant's lien on a post stands terminated on his acquiring lien on a permanent post outside the cadre and in the present case, for the petitioner having joined the State service, whatever were his rights with the University, stood extinguished. The learned Counsel yet further contended that for all such acts of concealments and joining different jobs and then, with willful absence and failing to join after expiry of period of his leave, the writ petitioner had abandoned the service with the University; and the University did not commit any error in terminating his contractual employment particularly when it was the post of Medical Officer and another incumbent could not have been continued on ad hoc basis for indefinite time. The Learned Counsel further contended that the period of leave, if at all granted, had already exhausted and thereafter, the petitioner could not have forced the appellant to grant him extension of leave; and his services were liable to be terminated when he failed to join.

25. The learned Counsel for the contesting respondent has, in the first place, submitted that in the entire length of submissions on behalf of the appellants, no

illegality or infirmity in the order impugned has been pointed out; and, on the contrary, the order impugned in these appeals was relied upon by the learned Single Judge of this Court in the case of Ashok Dhariwal Vs. University of Jodhpur, and then, the said decision was affirmed by the Division Bench of this Court on 23.05.1997 while dismissing the appeal (SAW No. 503/1992) as taken by the appellant-University. The learned Counsel, thus, contended that the decision under appeal having otherwise been approved by another Division Bench in the case of Ashok Dhariwal, would not call for interference in these appeals. In relation to the submissions made on behalf of the appellants, the learned Counsel contended that the objection regarding filing of writ petition through power of attorney remains baseless that has not even been stated in the memo of appeal and a person is entitled to appoint his power of attorney through whom he can sue or be sued. The learned Counsel further contended that the petitioner had not concealed any fact regarding his case; and when the term of his leave order included the permission that he could "join elsewhere", the petitioner did not commit any misconduct in joining the State service. The learned Counsel submitted that indisputably, the services of the petitioner were terminated without following the principles of natural justice and without notice and hence, the learned Single Judge has not committed any error in setting aside such an illegal action of the University. The learned Counsel further submitted that when the petitioner had a lien on the post as per the submission made on behalf of the appellant, moreover incumbent it was for the appellant-University to have taken proceedings in accordance with the requirements of the service Regulations and to serve notice upon the writ petitioner and to hold inquiry before seeking to terminate his services. The learned Counsel for the respondent has further argued that abandonment of service had never been the contention on behalf of the appellants before the learned Single Judge and such a contention sought to be developed in this appeal cannot be countenanced; and, according to the learned Counsel, there is not even a basis to say that the writ petitioner had abandoned the job with the appellant-University.

26. The learned Counsel for the other appellant Dr. Bhawneshwar Derasari only submitted that according to him, the lis has been rendered redundant for the writ petitioner having retired and else, so long as his rights are protected, the said appellant is not interested in this litigation on any other aspect.

27. Having given anxious consideration to the rival submissions and having scanned through the entire record with reference to the law applicable, we are, with respect, unable to concur with the learned Single Judge; and we are clearly of the view that the writ petition ought to have been dismissed.

28. In the first place, we may observe that though we have reservations on the competence of the writ petition as filed through the power of attorney holder, particularly looking to its subject matter and when several of the facts and events relating to his service were only in the personal knowledge of the petitioner and the averments thereto were required to be supported by his

affidavit but, looking to the overall facts and circumstances including the fact that before decision of the writ petition, the petitioner did file his own affidavit and the writ petition was decided on merits, we would ignore the objection on the competence of the writ petition on the ground of the same having been filed by the power of attorney holder.

29. Taking the suggestion as made on behalf of the contesting respondent with reference to the decisions in Ashok Dhariwal's case (supra), we are unable to agree that the order impugned in these appeals could, as such, be considered approved by this Court. Merely because the order impugned in these appeals was relied by the learned Single Judge of this Court in Ashok Dhariwal's case on the point that the action of the University was open to the writ jurisdiction and the University could not escape its liability on the strength of the submission that relationship was contractual one and then, the said decision in Ashok Dhariwal was approved by the Division Bench, it cannot be said that the present impugned order, on all the issues involved in this lis, has got affirmation from a Division Bench of this Court. The order impugned being subject to these appeals, even if referred in any other decision, cannot be said to have acquired finality so that its validity and legality on merits may not be examined in these appeals.

30. We may further point out that the fact situation in Ashok Dhariwal's case (supra) had been substantially different where the incumbent was on casual leave and later on, though did not join the duty but made applications after applications for grant of leave on account of illness. In Ashok Dhariwal, even while observing that there could be implied abandonment of service, the learned Single Judge found on the facts that it was not a case of abandonment of service; and the Division Bench affirmed such findings with reference to the facts of the case. In view of rejection of the University's plea on abandonment of service, the Court found it necessary that even when alleging willful absence, the University was not absolved of the requirements of holding the requisite enquiry. The fact situation of the present case is different on material and crucial particulars, as we shall presently discuss.

31. Entering into the merits of the present case, we find the order impugned having been passed by the learned Single Judge with a fundamental error of approach where a clear case of abandonment of service got overlooked; and, with respect, we are unable to affirm the writ issued by the learned Single Judge.

32. Hereinbefore, we have taken note of the observations as made, the findings as reached, and conclusions as drawn by the learned Single Judge in the order impugned. Put in a nutshell, the essential considerations that weighed with the learned Single Judge in allowing the writ petition had been that the termination of services of the petitioner was in violation of principles of natural justice; that the appellant-University had been unfair in not extending his leave though foreign assignment was a matter very much related with the diplomatic missions and granting of 5 years' leave was a matter of routine; and that dispensing with the services of the writ petitioner only on the ground of the post being of Medical

Officer was not proper because any other incumbent on this post would nevertheless be entitled to such foreign assignment. We are afraid, while proceeding on such considerations and while allowing the writ petition, the learned Single Judge missed altogether and overlooked the fundamental snag and lacuna in the petitioner's case that he had, in fact and in deed, abandoned the job with the University; and that his omission to report on duty despite non-extension of leave only reinforced the fact that he had abandoned the job.

33. As noticed, the writ petitioner obtained the order of two years' leave on 30.11.1979 from the appellant-University but the order stated that he would be joining his P.G. Course at Rohtak or elsewhere. In its context and phraseology, the expression "or elsewhere", cannot be read, as suggested on behalf of the writ petitioner, to the extent that the appellant-University had granted him leave to join a permanent job with the State Government. This order was not issued granting him extra-ordinary leave for the purpose of foreign assignment either. Be that as it may, and even if we ignore these aspects and assume that by the said order dated 30.11.1979, the University did grant him leave for two years w.e.f. 29.11.1979, the fact of the matter had been that immediately thereafter, the petitioner joined the State service as C.A.S. on 01.12.1979. In the face of such an admitted position, it is beyond a pale of doubt that since after 01.12.1979, the writ petitioner was not serving with the appellant-University and in fact, he was serving with the State Government.

34. In view of the indisputable fact situation aforesaid, we are clearly of the view that the leave application as moved by the petitioner to the appellant-University (whereupon the order dated 30.11.1979 came to be passed) was sham and pretentious; was rather that of stratagem. By the time the petitioner sought and obtained the said order dated 30.11.1979, he had already obtained the offer of appointment from the State Government (on 03.09.1979) and he was definitely in the process of joining the State service. In fact, he did join the State service the very next day i.e., 01.12.1979. The given fact situation and the conduct of the petitioner leaves nothing to guess or doubt that he had every intention to abandon the service of the appellant-University and, in fact, he did so. Such abandonment of service with the University was, by all means, complete on 01.12.1979 when the writ petitioner joined the State service.

35. We are not impressed with the submissions made on behalf of the writ petitioner that abandonment had not been the case urged on behalf of the appellant-University before the learned Single Judge and the same cannot be urged in these appeals. Abandonment or relinquishment of service is essentially a question of intention and it is noticed that in the present case, the University had right from beginning maintained and asserted that the writ petitioner never informed them of joining the State service. The petitioner could dare not deny specifically such a contention of the University and could dare not come out with any document that could be indicative of his having extended any information to the University about joining the State service. As noticed, the learned Single

Judge has overlooked this part of the matter while proceeding on other considerations. It cannot be said that the question of the writ petitioner's intent at abandonment was not intrinsic and inherent in the submissions made on behalf of the University before the learned Single Judge.

36. Though abandonment or relinquishment of service is a question of intention, and the same is not readily attributed to an employee; but could definitely be determined in the light of the surrounding circumstances. It is noticed that in the synopsis submitted in this appeal, the writ petitioner has projected that he left for Iran after serving the State for 5 months and said,-

4. That in the meanwhile, the respondent-petitioner also applied for, for the post of CAS through RPSC and he was selected and upon being appointed, he joined as CAS in the State of Rajasthan on 1.12.1979. After serving for some time, the respondent-petitioner resigned from the State services vide his letter dated 12.5.1980. Thus, he served the State only for a short while i.e., about 5 months.

37. Though the petitioner kept the things hazy and cryptic in the averments as taken in the writ petition regarding his joining with the State Government and about his alleged resignation but on the admitted facts as aforesaid, it is but apparent that on 01.12.1979, the petitioner had joined the State Government and had been serving the State Government only until leaving for Iran. Abandonment by the writ petitioner of the service with the University was complete in manner and effect.

38. True it is that on 28.01.1980 the Registrar of the University issued the NOC (Annex.4) for the petitioner to take the assignment in Iran but we find it very difficult to co-relate this No Objection Certificate with the order dated 30.11.1979 that was essentially for the purpose of study leave. There was no occasion and no basis that on 28.01.1980 the University would have granted the petitioner NOC for the purpose of taking up Iran assignment. In fact, on the given date i.e., 28.01.1980, the writ petitioner was in the employment of Government of Rajasthan! The writ petitioner went to Iran in the month of May 1980. It is not the case of the petitioner that he had, after allegedly resigning the State service, at all joined the University before leaving for Iran. In the given fact situation, we have no doubt that the order granting leave dated 30.11.1979 and the NOC dated 28.01.1980 were obtained by the writ petitioner under concealment of material facts. The said order dated 30.11.1979, the NOC dated 28.01.1980, and even the order dated 12.01.1982 extending leave for six months have to be regarded as void and non est.

39. In the aforesaid fact situation and the conduct of the writ petitioner, when there is nothing to guess or doubt that he had abandoned the service of the appellant-University as back as on 01.12.1979, we are clearly of the view that all other correspondence was aimed by the writ petitioner only at somehow keeping the University on a hook and one way or the other to keep clutches over the post of Medical Officer in the University. With respect, we find these relevant and

significant aspects of the matter having gone unnoticed from the consideration of the learned Single Judge, which has resulted in issuance of the impugned writ that cannot be approved.

40. Apart from the above, we are clearly of the opinion that even if the University be deemed to have granted leave and leave-extension to the writ petitioner, he had no such legal right whereby he could have forced the appellant-University to grant him further leave-extension as desired and to the extent demanded. The learned Single Judge has discussed in detail the aspects that several persons were sent on foreign assignments that were considered to be of public interest but, in our opinion, has exceeded the jurisdiction in observing that granting of leave for five years ought to be taken a matter of routine. We are unable to find such a broad proposition supported by any statutory provision. In our view, if at all the petitioner was relying on the leave granted and earlier extended by the University, it was incumbent for him to have reported on duty when the University did not extend the leave further. However, joining the University was not the intention of the petitioner at all. As aforesaid, the petitioner had abandoned the service of the University on 01.12.1979 itself when he joined the State service without informing the University in that regard. The fact that he failed to report on duty despite having been asked to do so by the University, and despite his leave having not been extended only fortifies the position that he had abandoned the service of the University.

41. We may observe that even if it be assumed that the petitioner's joining the State service and going to Iran were referable to the University's leave sanction order and NOC and hence, from a technical point of view, it was not a case of abandonment at the initial stage yet, and we have not an iota of doubt, the writ petitioner's not reporting on duty despite his leave having not been extended and despite having been asked to do so by the University was a clear and definite act of his abandonment of service of the University. Viewed from any angle, it is crystal clear that the petitioner had abandoned the service with the University.

42. As noticed, the only intention on the part of the petitioner had been to keep the University on tenterhooks so as to somehow assert his claim over the post of Medical Officer in the University whenever he would choose to return. The writ petitioner could not have been acceded any such right and, with respect, we are unable to find any reason that any writ could have been issued at his instance.

43. In the given fact situation, we are clearly of opinion that the action of the University in terminating the services of the writ petitioner could not have been set aside with theoretical reference to the principles of natural justice and without finding a clear case of prejudice. Nothing of prejudice being available in the present matter and the writ petitioner having even otherwise stayed put with his Iran assignment, the University was not expected to carry out an empty formality of enquiry in the name of the principles of natural justice when the writ petitioner was not even reverting to the country at the given stage. In fact, the

writ petitioner came to the country as late as the year 1990. It would have been a travesty of justice, if the University was supposed to hold an enquiry in relation to the employee like the writ petitioner, who had clearly abandoned the job; and to keep the post of Medical Officer vacant until completion of such formality or to carry on with a leave substitute for an indefinite time. The learned Single Judge, with respect, has omitted to appreciate that the rules of natural justice are required to be applied with reference to the realities of the fact situation of a given case and not in abstract. Recently, in the case of Union of India (UOI) and Others Vs. Bishamber Das Dogra, with reference to the several of decided cases, the Hon''ble Supreme Court has said,-

19. In Aligarh Muslim University v. Mansoor Ali Khan this Court considered the judgment in M.C. Mehta v. Union of India wherein it has been held that an order passed in violation of natural justice need not be set aside in exercise of the writ jurisdiction unless it is shown that non-observance has caused prejudice to the person concerned for the reason that quashing the order may revive another order which itself is illegal or unjustified.

20. This Court in Mansoor Ali Khan case also considered the judgment in S.L. Kapoor v. Jagmohan wherein it has been held that in a peculiar circumstance observance of the principles of natural justice may merely be an empty formality as if no other conclusion may be possible on admitted or indisputable facts. In such a fact situation, the order does not require to be quashed if passed in violation of natural justice. The Court came to the conclusion that a person complaining of non-observance of the principles of natural justice must satisfy that some real prejudice has been caused to him for the reason that there is no such thing as a merely technical infringement of natural justice.

44. In view of the principles aforesaid and in view of the admitted and indisputable fact situation, in our opinion, the principles in Shrilekha and Jai Shanker (supra), as referred by the learned Single Judge, are not applicable to the present case; and the resolution and the order in question did not require any interference even if allegedly passed not in conformity with the requirements of holding enquiry. In relation to an employee like the writ petitioner who had already abandoned the job, there was never any question of prejudice.

45. For the reasons foregoing, we are unable to uphold the order impugned; and we are clearly of opinion that the writ petition deserves to be dismissed.

46. We may in the passing observe that even in equity, the petitioner does not appear entitled to any relief. A comprehension of the facts makes it clear that the petitioner had keenness more for personal prospects rather than the job of Medical Officer with the University and had taken up different propositions like joining the State services and seeking foreign assignment. The petitioner returned from Iran only in the year 1990. The petitioner has further admitted that he got permanent employment with the State in the year 1994 and retired therefrom. What the petitioner now suggests is that if he is granted continuity of

service in the University, he would get pension for 35 years of alleged service with the University. We find such a proposition against all canons of equity and justice where the petitioner intends to seek pension from the University where he scarcely served for about 5 years only. However, looking to the facts of the case and the law applicable, it does not appear necessary to dwell much on these aspects of equity because we are clearly of the view that the writ petitioner is not entitled to any relief in law.

47. Consequently, these appeals succeed and are allowed; the impugned order dated 27.03.1992 is set aside; the writ petition filed on behalf of the petitioner stands dismissed. However, in the circumstances, the parties are left to bear their own costs.

48. Judgment pronounced in open Court today.

49. These appeals are allowed. (See separate judgment).