



2023/KER/78726

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

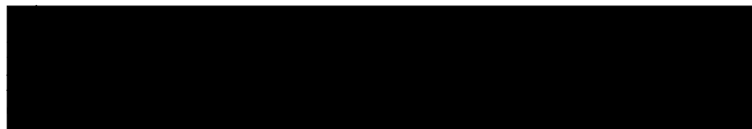
WEDNESDAY, THE 6TH DAY OF DECEMBER 2023 / 15TH AGRAHAYANA, 1945

OP (CAT) NO. 54 OF 2023

ORDER DATED 27.02.2023 IN OA 131/2020 OF CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH

PETITIONER/PETITIONER:

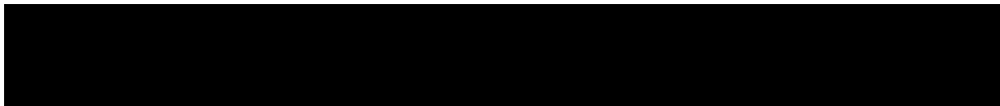
B.SURESH, AGED 55 YEARS



BY ADV C.S.GOPALAKRISHNAN NAIR

RESPONDENTS/RESPONDENTS:

- 1 CHIEF ENGINEER & ADMINISTRATOR,
ANDAMAN LAKSHADWEEP HARBOUR WORKS, P.O.NO.161,
MOHANPURA, PORT BLAIR, PIN - 744101
- 2 DY. CHIEF ENGINEER- I, ANDAMAN HARBOUR WORKS,
P.O.NO.309, PORT BLAIR, PIN - 744101
- 3 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF SHIPPING
AND TRANSPORT, PARIVAHANBHAVAN, 1, PARLIAMENT STREET,
NEW DELHI, PIN - 110001
- 4 T.N.KRISHNAMOORTHY,



BY ADV.
SRI.K.S.PRENJITH KUMAR - FOR DSGI

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 27.10.2023,
THE COURT ON 06.12.2023 DELIVERED THE FOLLOWING:



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JUDGMENTSHOBA ANNAMMA EAPEN, J.

This original petition is filed by the applicant before the Central Administrative Tribunal, Ernakulam Bench, challenging the order of the Tribunal in OA No.131 of 2020.

2. Brief facts of the case are as follows;

The petitioner/applicant was the driver in the Andaman Lakshadweep Harbour Works, who was originally appointed as temporary driver on adhoc basis on 28.05.1984. Thereafter, his appointment was confirmed as per Annex.A2 order dated 22.08.1990. According to the petitioner, he fell ill in 1994 due to Hepatitis and hence, applied for leave along with Annex.A3 Medical Certificate dated 21.01.1994 issued by a hospital at Port Blair. According to the petitioner, the leave was being extended in support of Medical Certificate



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and after recovering from his illness, he reported for duty on 02.02.2011. However, he was not permitted to rejoin duty and was informed that his service has been terminated on account of long absence. Aggrieved by this, though the petitioner has approached the Kolkatta Bench of the Central Administrative Tribunal with OA No.141/AN/2011, it was withdrawn due to the pendency of an appeal filed by the petitioner before the appellate authority challenging termination. While so, the appellate authority dismissed the appeal, against which, OA No.131 of 2020 has been filed. The Tribunal, after elaborate consideration of the issue, declined to interfere with the findings of the appellate authority and rejected the original application, finding that the petitioner never informed about his ailment and never sought for leave. It was further held that the administration was justified in terminating the petitioner by due



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process of law. Challenging this, the petitioner has approached this Court.

3. The learned counsel for the petitioner submitted that, the petitioner, who was a permanent employee, was terminated from service without following due procedure of law, which is *per se* illegal. It is argued that he being a permanent employee, the Standing Order issued in respect of work-charged labourers is not applicable to him and that, the termination order was not served on the petitioner and as such, it is not known as to when service of the petitioner was terminated. The learned counsel further submitted that the petitioner was undergoing treatment and became medically fit only on 21.01.2011 and immediately thereafter, the petitioner requested to permit him to join duty, which was rejected.

4. *Per contra*, the learned Deputy Solicitor General submitted that the petitioner did not



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attend office for 16 years and six months, which is not unauthorized absence, but abandonment of service. It is further submitted that the notice of order of termination was served on the petitioner. According to the learned Deputy Solicitor General, the petitioner has not produced any Medical Certificate issued by any hospital, but, only submitted Annex.R2 representation dated 25.02.1994, requesting to cancel his transfer order. A memo dated 15.03.1994 issued by the Administrative Officer, ALHW, Port Blair, was served on him in the address shown in Annex.R2 representation, informing that his request was rejected and directing him to report for duty without further delay. However, in spite of receipt of the above memo, he neither joined duty nor submitted any Medical Certificate/application for extension of leave; and it is after a lapse of 17 years, he submitted his duty report on 02.02.2011 along



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with Annex.R4 Medical Certificate and Medical Fitness Certificate.

5. The case of the petitioner is that along with Annex.R5 application dated 09.08.1994, he had enclosed Annex.R4 Medical Certificate dated 30.04.1994, wherein it was certified that the petitioner was suffering from Pakshagatam (Vatta Rogam) and the doctor, who issued the certificate, had treated the petitioner for a period of 16 years, 8 months and 20 days from 30.04.1994 to 20.01.2011. However, subsequently, on seeking confirmation regarding the genuineness of the above certificate, the doctor informed as per Annex.R7 that the certificate is genuine, but the date in the Medical Certificate for leave was inadvertently indicated as 30.04.1994 instead of 20.01.2011. From this, it is clear that the doctor issued certificate on 20.01.2011 and not on 30.04.1994 and that the statement of the petitioner that the Annexure R7 certificate was



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submitted along with application dated 09.08.1994 is with *mala fides*. Three cases were filed before the Central Administrative Tribunal, Calcutta Bench (Circuit at Port Blair) in the same matter and all the three cases were dismissed.

6. I have considered the rival submissions made on both sides and perused the records.

7. The question to be considered in this original petition is whether this is a case of "termination of service" as contended by the petitioner or a case of "voluntary abandonment of service" as contended by the respondents.

8. The appointment of the petitioner, who was appointed as temporary driver on adhoc basis on 28.05.1984, was confirmed by order dated 22.08.1990. Admittedly, from 21.01.1994, the petitioner was not attending duties. According to the petitioner, after recovering from paralysis, he reported for duty on 02.02.2011 along with Annex.A4 letter seeking permission to rejoin.



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Thereafter, on the information that his previous records of service are not available with the respondents, the petitioner furnished nine documents available with him. While so, due to the ailment of his mother, he had to leave for Kerala urgently, for which he sought permission to leave the station as per Annex.A9 dated 25.03.2011. Thereafter, the petitioner filed Annex.A10 representation on 19.05.2011, requesting to take him back for duty.

9. As per Annex.R2 representation dated 25.02.1994, the petitioner had requested the respondents to cancel his transfer order, which was rejected as per Annex.R3 memo dated 15.03.1995, directing him to report for duty without further delay. However, nothing is stated in the original petition regarding the above transfer. After service of Annex.R3 memo, he neither submitted any medical certificate nor sought for extension of leave; and after a lapse



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of 17 years, on 02.02.2011, he requested for rejoining duty along with Annex.R4 Medical and Fitness Certificates. On a perusal of Annexure R4, it is seen that the Medical Certificate is dated 30.04.1994, however, the period of treatment is shown as, "from 30th April 1994 to 20th January 2011". On clarification regarding the genuineness of Annex.R4 Medical Certificate, the doctor, who issued the said certificate, confirmed as per Annex.R7 that the certificate is genuine, however, it is clarified that the date of issuance of the Medical Certificate is inadvertently mentioned as 30.04.1994, instead of 20.01.2011. The contention of the petitioner that the Annex.R4 Medical Certificate had been given along with Annex.R5 application dated 09.08.1994 is incorrect. For the past nearly 17 years, there was no correspondence to substantiate the contention that the petitioner had requested the respondents for extension of leave, informing



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that he was undergoing treatment.

10. It is an admitted fact that from 21.01.1994, the petitioner did not attend duty and thereafter, it is only on 02.02.2011, he reported for duty, i.e., after 16 years and 6 months. According to the respondents, since the petitioner remained absent for more than 600 consecutive days, it is deemed that he has left the employment and accordingly, as per Standing Order No.11 vide clause No.(h) of Work charged Establishment of ALHW, which provides that a workman, who remains absent from duty without prior permission for more than 10 consecutive days, will deem to have left the employment and his services will stand terminated, the petitioner was terminated from service with effect from 08.10.1993. When the petitioner reported for duty on 02.02.2011, he was informed that the records were lost in the tsunami in 2004, and as per Annex.A7, he was requested to



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furnish the documents in connection with his leaving from the Department. However, the petitioner could produce only the intimations stated to have been sent by him, whereas, according to the respondents, no such intimations were received by them. The further contention of the petitioner is that the Administration, after affirming the genuineness of Annex.R4 Medical Certificate, cannot turn around and say that the documents cannot be relied upon. Annex.R4 Medical Certificate was issued by the doctor on 20.01.2011, which falsified the claim of the petitioner that it was submitted along with the leave application in the year 1994.

11. According to the respondents, since the petitioner had not obtained leave and his absence was without intimation, it cannot be treated as unauthorized absence, on the other hand, it is abandonment of service.

12. The petitioner, admittedly, did not



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attend office for around 17 years. He could not produce any document to substantiate the contention that he had requested for leave subsequently during the 17-years-period. It is after 16 years and 6 months, after giving request for rejoining duty in 2011, he produced the documents. No explanation is forthcoming from the side of the petitioner other than the contention that he was under ayurvedic treatment for paralysis.

13. Abandonment of service means an act of intentionally or voluntarily abandoning service. It is seen that while the petitioner was transferred to Campbell Bay in 1998, he remained himself absent without any information. The act of the petitioner is nothing, but, abandonment of employment permanently and completely since for the past 17 years, he did not attend duties. No reason can be attributed for the absence of the petitioner from employment for such a long



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period, which cannot be found to be legally sustainable.

14. In **Vijay S. Sathaye v. Indian Airlines Ltd. & Others** [(2013) 10 SCC 253], the apex court held that where an employee does not join duty and remains absent for long, then such absence is required to be treated as misconduct and if such absence is for a very long period, then, it amounts to voluntary abandonment of service resulting in termination of service automatically without requiring any further order from the employer. It is relevant to extract paragraphs 12 to 16 of the judgment in **Vijay S. Sathaye** (*supra*), which read as under;

"12. It is a settled law that an employee 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.



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13. In Jeewanlal (1929) Ltd. v. Its Workmen: AIR 1961 SC 1567, this Court held as under: (AIR p.1570, para 6) "6. ...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."

(See also Shahoodul Haque v. Registrar, Coop. Societies: AIR 1974 SC 1896.)

14. 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 on behalf of the employee and the employer has no role in it. Such an act cannot be termed as "retrenchment" from service. (See State of Haryana v. Om Parkash: (1998) 8 SCC 733).

15. In Buckingham and Carnatic Co. Ltd. v. Venkatiah: AIR 1964 SC 1272, while dealing with a similar case, this Court observed: (AIR p.1275, para 5) "5. ...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."

A similar view has been reiterated in G.T. Lad v. Chemical and Fibres of India Ltd. : AIR 1979 SC 582.

16. In Syndicate Bank v. Staff Assn.: (2000) 5 SCC 65 and Aligarh Muslim University v. Mansoor Ali Khan : AIR 2000 SC 2783 this 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 ceases 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. A similar view has been reiterated in Banaras Hindu University v. Shrikant: (2006) 11 SCC 42, Chief Engineer (Construction) v.



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Keshava Rao: (2005) 11 SCC 229 and Bank of Baroda v. Anita Nandrajog : (2009) 9 SCC 462."

15. The petitioner without any intimation has kept himself away from service for a long period of nearly 17 years. The claim of the petitioner that he was seeking extension of leave remains unsubstantiated. 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 on behalf of the employee and the employer has no role in it. We hold that long absence of nearly 17 years from service without any proper intimation or correspondence is nothing, but, abandonment of service. The petitioner is deemed to have abandoned his services with the respondents and is not entitled to get any benefits. Hence, we are of the view that the Tribunal has considered the issue in the right perspective and passed a very reasoned order, which does not require any



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interference.

The original petition fails and stands dismissed accordingly.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-

**APPENDIX OF OP (CAT) 54/2023**

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE MEMO NO.EEM/WC-14/SC/3450 DT:30.5.1984, ISSUED BY THE PRINCIPAL ENGINEER (MAINTENANCE PORT BLAIR)
- Annexure A2 TRUE COPY OF THE OFFICE ORDER NO.320/90 DT:22.8.1990 ISSUED BY THE 2ND RESPONDENT
- Annexure A3 TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE DOCTOR G.B.PANTH HOSPITAL, PORT BLAIR ON 21.1.1994
- Annexure A4 TRUE COPY OF THE LETTER NO.2.2.2011 SUBMITTED TO THE 1ST RESPONDENT
- Annexure A5 TRUE COPY OF THE LETTER NO.EE/DD/WC/E-1/548 DT:15.2.2011 ISSUED BY THE 2ND RESPONDENT
- Annexure A6 TRUE COPY OF THE LETTER NO.EEC/CB/WC/MISC/261 DATED 28.2.2011 ISSUED BY THE DY CHIEF ENGINEER II
- Annexure A7 TRUE COPY OF THE MEMO NO.ALHW/ADM/2(23) 2009 /796 DT:8.3.2011
- Annexure A8 TRUE COPY OF THE LETTER DATED 8.3.2011 SUBMITTED TO THE 1ST RESPONDENT
- Annexure A9 TRUE COPY OF THE LETTER DT:25.3.2011
- Annexure A10 TRUE COPY OF THE LETTER DT:19.5.2011
- Annexure A11 TRUE COPY OF THE REPLY STATEMENT
- Annexure A12 TRUE COPY OF THE ORDER DT:19.4.2012 IN



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OA NO.141/AN/2011

- Annexure A13 TRUE COPY OF THE LETTER DT:23.6.2011
ISSUED BY DR.N. BABU RAJENDRAN,
OUSHADA AYURVEDIC PANCHAKARMA
TREATMENT CENTRE
- Annexure A14 TRUE COPY OF THE APPEAL DT:21.5.2012
- Annexure A15 TRUE COPY OF THE ORDER DT:14.3.2014 IN
OA NO. 141/ AN/2013
- Annexure A16 TRUE COPY OF THE ORDER IN OA
NO.351/00062/2014 DT:19.12.2018
- Annexure A17 TRUE COPY OF THE ORDER NO. ALHW/ADM/2/
(29)/2018/306 DATED 1/2/2019 ISSUED BY
THE 1ST RESPONDENT
- Annexure A18 TRUE COPY OF THE REPRESENTATION
DT:30.9.2019
- Annexure A19 TRUE COPY OF THE LETTER NO.
ALHW/ADM/2(29)2018/3056 DATED
25/10/2019 ISSUED BY THE 1ST
RESPONDENT
- Annexure A20 TRUE COPY OF THE DESERTION NOTICE
PUBLISHED IN 'DAILY TELEGRAPH'
DT:7.9.2007
- Annexure A21 TRUE COPY OF THE LETTER DT:19.2.2010
- Annexure A22 TRUE COPY OF THE MEMO NO.EEM/LA/PF-
87/397 DT:20.2.2010 ISSUED BY DY.
CHIEF ENGINEER IV
- Annexure R1 TRUE COPY OF THE OFFICE ORDER
NO.841/93 DT:08.10.1993 WITH ITS TYPED
COPY
- Annexure R2 TRUE COPY OF THE REPRESENTATION



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DT:25.2.1994

- Annexure R3 TRUE COPY OF THE REPLY VIDE MEMO
BEARING NO.ALHW/ADM/ 2(6) /92
DT:15.3.1994
- Annexure R4 TRUE COPY OF THE DUTY REPORT, DATED
02.02.2011 ALONG WITH MEDICAL AND
REQUEST FOR REJOINING
- Annexure R5 TRUE COPY OF AN APPLICATION, DATED
09.08.1994
- Annexure R6 TRUE COPY OF A LETTER NO.
ALHW/VIG/12(4)2010/54 DATED 17.06.2011
- Annexure R7 TRUE COPY OF THE REPLY TO THE LETTER
NO.ALHW/VIG/12(4) 2010/54
DT:23.06.2011
- Annexure R8 TRUE COPY OF THE CAT'S ORDER IN OA
NO.141/AN /2011 DATED 19.4.2011
- Annexure R9 TRUE COPY OF THE CAT'S ORDER IN OA
NO.141/AN /2013 DATED 14.03.2014
- Annexure R10 TRUE COPY OF THE CAT'S ORDER IN OA
NO.351/00062 DATED 19.12.2018
- Annexure R11 TRUE COPY OF THE ORDER BEARING
NO,ALHW/ADM/2(20) /2018 /306 DATED
01.02.2019
- Annexure R12 TRUE COPY OF THE LETTER NO. ALHW
/ADM /2(29) /2018/3056 DATED
25.10.2019
- Annexure R13 TRUE COPY OF THE STANDING ORDER
- Annexure A23 TRUE COPY OF THE REPRESENTATION
DT:25.2.1994 ALONG WITH THE MEDICAL
CERTIFICATES DT:21.1.1994 ISSUED BY
THE MEDICAL OFFICER OF G.B.PANT



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HOSPITAL, PORT BLAIR

Annexure A24	TRUE COPY OF THE LEAVE APPLICATION DT:3.5.1994
Annexure A25	TRUE COPY OF THE LEAVE APPLICATION DT:9.8.1994
Exhibit P1	TRUE COPY OF THE ORIGINAL APPLICATION NO.131/2020
Exhibit P2	TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS
Exhibit P3	TRUE COPY OF THE REJOINDER WAS FILED BY THE PETITIONER
Exhibit P4	TRUE COPY OF THE ARGUMENT NOTE FILED BY THE PETITIONER
Exhibit P5	TRUE COPY OF THE ORDER DT: 27.2.2023 IN OA NO.131/2020