

**Sita Ram v. The Presiding Officer, Labour Court, Patiala and 275  
others (R. P. Sethi, J.)**

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reimbursement, would not amount to estoppel on his part, as there is no estoppel against a statute. Otherwise also, in a welfare state, governed by the rule of law, to deny a just and genuine claim of a Government servant does not bring any credit to the State." Therefore, in that case the petitioner had gone abroad after giving in writing as aforesaid but the Division Bench of this court has held that the said petitioner was entitled to get the expenses reimbursed. The case of the present petition stands on a better footing because he has not given in writing as the petitioner in the case of Dr. Prem Nath Garg (Gupta) had.

(10) Here in the present case, the Escorts Heart Institute and Research Centre, New Delhi was recognised and except that the prior approval of the Medical Board was not obtained, there remains no other defence to the Government. It would be harsh, cruel and inhuman to ask a person, facing death ahead, to wait for the procedural formalities of the Government. In view of these circumstances, we find that rejection of the claim of the petitioner for want of prior permission of the Medical Board was not justified.

(11) As a result the petition succeeds and we direct the respondents to reimburse the medical expenses incurred by the petitioner for open heart surgery. The petitioner is also held entitled for the interest at the rate of 18 per cent per annum over the reimbursed amount from the date he underwent the treatment till the amount is paid.

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**R.N.R.**

*Before Hon'ble R. P. Sethi & S. S. Sudhalkar, JJ.*

**SITA RAM.—Petitioner.**

*versus*

**THE PRESIDING OFFICER, LABOUR COURT, PATIALA AND  
OTHERS.—Respondents.**

**C.W.P. No. 17337 of 1994.**

**18th May, 1995.**

*Constitution of India 1950—Arts. 226/227—Industrial Disputes Act 1947—S. 2(oo) 25F—Absence from Duty—At most can be held to be misconduct—Cannot be equated with abandonment of service—Abandoned meaning thereof.*

*Held*, that the 'absence's simplicitor by itself cannot be equated with abandonment of the service. According to the dictionary 'absent' means "not present". It also means not being in a particular place at a certain time. The absence therefore means to be absent from specific position and not physically present. Abandoned on the other hand connotes to a conscious decision of a person who relinquishes the position held by him. It means complete leaving of things as a final rejection of one's responsibilities. According to Oxford Dictionary it means, to let go, give up, renounce, leave off, to cease to hold, use or precise.

(Para 8)

H. S. Baath, Advocate, *for the Petitioner*

Somesh Ojha, Advocate, *for the Respondent*

#### ORDER

*R. P. Sethi, J.*

(1) *Vide* endorsement No. 10 SAGH/151-A-88/591158—62, dated 3rd September, 1989, the Labour Commissioner, Punjab, Chandigarh referred the following dispute for adjudication to the Labour Court under Section 10(1) of the Industrial Disputes Act, 1947 (for short the 'Act').

"Whether termination of Services of Shri Sita Ram, Workman, is justified and in order ? If not, to what relief/exact amount of compensation is he entitled ?"

(2) After filing of the pleadings, the Labour Court framed the following issues :—

1. Whether the references is bad in law as alleged ?
2. Whether the order of termination of services of the workman is justified and in order ?
3. Relief.

Issue No. 1 was not pressed.

(3) While deciding Issue No. 2, the Labour Court held that as the workman had absented from duty with effect from 28th January, 1988, the management was justified in terminating his services on 25th March, 1988,—*vide* letter Ex. M.7. The Labour Court concluded

that the case of the workman was abandonment of service and not of retrenchment.

(4) 'Retrenchment' has been defined in Section 2(oo) of the Act to mean :

"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 conduct of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in behalf contained therein ; or
- (c) termination of the services of a workman on the ground of continued ill-health."

(5) Absence from duty is not covered by any of the exceptions as enumerated in sub-clauses (a) (b) (bb) and (c). Absence from duty can at the most be held to mean to be a mis-conduct. The termination of services on the ground of mis-conduct could not be resorted to without holding an enquiry or complying with the provisions of the Act.

(6) In '*Jai Shanker v. State*' (1), the Supreme Court held that the removal of a workman from service for over-staying his leave without holding enquiry or giving an opportunity to show-cause was illegal despite the fact that service regulations provided that any individual who absented himself without permission after the end of his leave would be considered to have sacrificed his appointment. Discharge from service of an incumbent by way of punishment amounted to removal from service.

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(1) A.I.R. 1966 S.C. 492.

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(7) This Court also in *Management of Modella Woollens Ltd. v. Presiding Officer, Labour Court (2)*, held that the termination of services on the ground of absence from duty constitutes termination by mis-conduct which was not permissible unless proper enquiry was held according to the principles of natural justice.

(8) In the instant cases, the termination of services of the petitioner-workman was admittedly by way of punishment and was not inflicted after holding an enquiry within the meaning of Section 25-F of the Act. The 'absence' simplicitor by itself cannot be equated with abandonment of the service. According to the dictionary 'absent' means "not present". It also means not being in a particular place at a certain time. The absence therefore means to be absent from specified position and not physically present. Abandoned on the other hand connotes to a conscious decision of a person who relinquishes the position held by him. It means complete leaving of things as a final rejection of one's responsibilities. According to Oxford Dictionary it means, to let go, give up, renounce, leave off, to cease to hold, use or precise. The meaning of the word 'abandoned' depends upon the context in which it is intended to be used. The Labour Court appears to have completely ignored the settled provisions of law and passed a judgment merely on hypothesis. As the termination of services of the petitioner-workman in the instant case amounts to retrenchment, the respondent-employer was under a legal obligation to follow the procedure prescribed under section 25-F of the Act. As admittedly the procedure under Section 25-F has not been followed, the action of the respondent-employer was unjust and the Labour Court was not justified in rejecting the reference made to it.

(9) Under the circumstances, the writ petition is allowed and the award of the Labour Court is set aside. The petitioner-workman is directed to be reinstated forthwith with continuity of service and back wages from the date of demand notice.

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J.S.T.

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