



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

(1) WRIT PETITION NO.2594 OF 2017

Petitioner : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
(Respondent before the Labour Court and Revision Petitioner before the Industrial Court)
– Versus –

Respondents : 1. Smt. Indira Madhukar Muraskar,
R/o C/o Adv. Nimbalkar, Ganeshpeth, Nagpur.
(Original Complainant)

2. District Women, Child and Physically Handicapped Development Officer,
Office at Zilla Parishad, Nagpur.

3. Director Social Welfare,
Maharashtra State, Pune.

4. The State of Maharashtra,
Social Welfare Department, Mantralaya,
Mumbai : 32, Through its Secretary

WITH

(2) WRIT PETITION NO.2595 OF 2017

Petitioner : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
(Respondent before the Labour Court and Revision Petitioner before the Industrial Court)
– Versus –

Respondents : 1. Shri Santosh Shitaram Charpe,
Superintendent, EWS/175, Kaveluwale Quarter,
Nandanwan, Nagpur (Original Complainant)

2. District Women, Child and Physically Handicapped Development Officer,
Office at Zilla Parishad, Nagpur.
3. Director, Social Welfare,
Maharashtra State, Pune.
4. The State of Maharashtra,
Social Welfare Department, Mantralaya,
Mumbai : 32, Through its Secretary

WITH

(3) WRIT PETITION NO.2596 OF 2017

Petitioner : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
(Respondent before the Labour Court and Revision Petitioner before the Industrial Court)
– Versus –

Respondents : 1. Shri Dinesh Sukhadeorao Bulkunde,
At and Post Sindi Railway, Tah. Seloo,
District Wardha (Original Complainant)
2. District Women, Child and Physically Handicapped Development Officer,
Office at Zilla Parishad, Nagpur.
3. Director, Social Welfare,
Maharashtra State, Pune.
4. The State of Maharashtra,
Social Welfare Department, Mantralaya,
Mumbai : 32, Through its Secretary

WITH

(4) WRIT PETITION NO.2597 OF 2017

Petitioner : Rashtrasant Tukdoji Maharaj Technical and Education Society,

Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
(Respondent before the Labour Court and Revision
Petitioner before the Industrial Court)

– Versus –

Respondents

- : 1. Shri Arvind Rambhau Bhandarkar,
R/o C/o Gosewade P.N.N. 45, Reshimbag, Nagpur
(Original Complainant)
2. District Women, Child and Physically Handicapped
Development Officer,
Office at Zilla Parishad, Nagpur.
3. Director, Social Welfare,
Maharashtra State, Pune.
4. The State of Maharashtra,
Social Welfare Department, Mantralaya,
Mumbai : 32, Through its Secretary

WITH

(5) WRIT PETITION NO.2598 OF 2017

Petitioner

- : Rashtrasant Tukdoji Maharaj Technical and
Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
(Respondent before the Labour Court and Revision
Petitioner before the Industrial Court)
- Versus –

Respondents

- : 1. Shri Dhanaraj Shalikram Shrirame, Peon,
R/o C/o D.B. Gharatkar, 59, Old Dhyneneshwar
Nagpur, Nagpur (Original Complainant).
- 1A Roopali w/o Dhanraj Shrirame,
Aged about 50 years.
- 1B Mayur s/o Dhanraj Shrirame,
Aged about 27 years.
- 1C Mrunal d/o Dhanraj Shrirame,
Aged about 25 years.

L.Rs. of R-1 i.e. 1A to 1C
are brought on record as
per Court's Order dated
06/03/2024.

All R/o Plot No.18, Umrer Road, near Ganesh Apartment, Sai Nagar, Gonhisim, Dighori Naka, Bahadura, Vihirgaon, Nagpur (Rural), Nagpur, Maharashtra 441 204.

2. District Women, Child and Physically Handicapped Development Officer,
Office at Zilla Parishad, Nagpur.
3. Director, Social Welfare,
Maharashtra State, Pune.
4. The State of Maharashtra,
Social Welfare Department, Mantralaya,
Mumbai : 32, Through its Secretary

WITH

(6) WRIT PETITION NO.715 OF 2019

Petitioner : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
Through Secretary (Original Respondent No.1.)

– Versus –

Respondents : 1. Manda Shriram Burade,
Aged about 35 years, Occ. Nil,
R/o 287, B/h New Sangha Building, Reshimbagh,
Nagpur (Original Complainant)

2. District Social Welfare Officer,
Zilla Parishad, Nagpur (Original Respondent No.2)

3. The Commissioner,
Handicapped Welfare Officer,
Maharashtra State, Pune.
(Original Respondent No.3)

4. The Secretary,
Social Welfare Department, Mantralaya,
Mumbai : 32 (Original Respondent No.4)

WITH

(7) WRIT PETITION NO.716 OF 2019

Petitioner : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
Through Secretary (Original Respondent No.1)

– Versus –

Respondents : 1. ~~Uttam Rajaram Bhowate,~~
~~Aged about 30 years, Occupation : Nil,~~
~~R/o Home For Aged And Handicapped, Untkhana,~~
~~Nagpur (Original Complainant)~~

1A Khatija Uttam Bhowte,
Aged about 56 years.

1B Abhilash Uttam Bhowte,
Aged about 27 years,
Both R/o Plot No.38, Shyam Nagar,
Bhagwan Nagar Road, Nagpur – 27.

2. District Social Welfare Officer,
Zilla Parishad, Nagpur (Original Respondent No.2.)

3. The Commissioner, Handicapped Welfare Officer,
Maharashtra State, Pune.
(Original Respondent No.3)

4. The Secretary,
Social Welfare Department, Mantralaya,
Mumbai : 32 (Original Respondent No.4.)

*L.Rs. of R-1 i.e. 1A & 1B
are brought on record as
per Court's Order dated
06/03/2024.*

WITH

(8) WRIT PETITION NO.730 OF 2019

Petitioner : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
Through Secretary (Original Respondent No.1)

– Versus –

Respondents

- : 1. Pratap Shamrao Basewar,
Aged about 34 years, Occupation : Nil,
R/o Panwadi, Post Khamgaon, Katol,
District Nagpur (Original Complainant)
2. District Social Welfare Officer,
Zilla Parishad, Nagpur (Original Respondent No.2.)
3. The Commissioner, Handicapped Welfare Officer,
Maharashtra State, Pune.
(Original Respondent No.3)
4. The Secretary,
Social Welfare Department, Mantralaya,
Mumbai : 32 (Original Respondent No.4.)

WITH

(9) WRIT PETITION NO.731 OF 2019

Petitioner

- : Rashtrasant Tukdoji Maharaj Technical and
Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
Through Secretary (Original Respondent No.1)

– Versus –

Respondents

- : 1. Arun Damodar Hemane,
Aged about 28 years, Occupation : Nil,
R/o 2/8, Yogeshwar Nagar, Near Durga Mandir,
Dighori, Nagpur. (Original Complainant)
2. District Social Welfare Officer,
Zilla Parishad, Nagpur (Original Respondent No.2.)
3. The Commissioner, Handicapped Welfare Officer,
Maharashtra State, Pune.
(Original Respondent No.3)
4. The Secretary,
Social Welfare Department, Mantralaya,
Mumbai : 32 (Original Respondent No.4.)

WITH

(10) WRIT PETITION NO.732 OF 2019

- Petitioner** : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
Through Secretary (Original Respondent No.1)
– Versus –
- Respondents** : 1. Atish Marotrao Dandekar,
Aged about 28 years, Occupation : Nil,
R/o 97, “Anand”, Ayodhya Nagar, Nagpur
(Original Complainant)
2. District Social Welfare Officer,
Zilla Parishad, Nagpur (Original Respondent No.2.)
3. The Commissioner, Handicapped Welfare Officer,
Maharashtra State, Pune.
(Original Respondent No.3)
4. The Secretary,
Social Welfare Department, Mantralaya,
Mumbai : 32 (Original Respondent No.4.)

WITH

(11) WRIT PETITION NO.733 OF 2019

- Petitioner** : Rashtrasant Tukdoji Maharaj Technical and Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
Through Secretary (Original Respondent No.1)
– Versus –
- Respondents** : 1. Vimalkumar Bholaram Dwiwedi,
Aged about 30 years, Occupation : Nil,
R/o Plot No.163, Yogeshwar Society, Umred Road,
Dighori, Nagpur 440034 (Original Complainant)

2. District Social Welfare Officer,
Zilla Parishad, Nagpur (Original Respondent No.2.)
3. The Commissioner, Handicapped Welfare Officer,
Maharashtra State, Pune.
(Original Respondent No.3)
4. The Secretary,
Social Welfare Department, Mantralaya,
Mumbai : 32 (Original Respondent No.4.)

WITH

(12) WRIT PETITION NO.734 OF 2019

Petitioner : Rashtrasant Tukdoji Maharaj Technical and
Education Society,
Kumbhalkar Bhavan, Ganeshpeth, Nagpur.
Through Secretary (Original Respondent No.1)

– Versus –

Respondents : 1. Suresh Ramchandra Khobragade,
Plot No.1, Manav Mandir, Nari Road,
Post Uppalwadi, Nagpur – 440 026
(Original Complainant)

2. District Social Welfare Officer,
Zilla Parishad, Nagpur (Original Respondent No.2.)

3. The Commissioner, Handicapped Welfare Officer,
Maharashtra State, Pune.
(Original Respondent No.3)

4. The Secretary,
Social Welfare Department, Mantralaya,
Mumbai : 32 (Original Respondent No.4.)

Mr. A.D. Mohgaonkar, Advocate for the Petitioner.
Mr. H.V. Thakur, Advocate for Respondent No.1.
Mr. S.B. Bissa, A.G.P for Respondent Nos.2 to 4

CORAM : ANIL L. PANSARE, J.
RESERVED ON : 29th APRIL, 2025.
PRONOUNCED ON : 9th MAY, 2025.

J U D G M E N T :

Issue Rule, returnable forthwith. Learned Counsel Mr. H.V. Thakur waives service of Rule on behalf of employee and learned Assistant Government Pleader Mr. S.B. Bissa waives on behalf of respondent Nos.2 to 4. With consent of learned Counsel for the parties, the petitions are taken up for final hearing.

02. The issue involved in these petitions is identical and, therefore, they are being decided by common judgment. For the sake of convenience, the parties chose to refer to facts of Writ Petition No. 715/2019.

03. Having heard both sides and having gone through the material placed before me, the following question arises for consideration:

“Whether in the facts and circumstances of the case, the removal of names of respondents-employees from muster roll by the petitioner-employer amounts to termination/retrenchment of services of the respondents-employees?”

04. The employees were appointed as Assistant Cook, Clerk, Accountant, Librarian, Caretaker, etc. during the period from the year 1991-1993 by following due process of law. These employees issued strike out notice in August, 1993. The petitioner challenged the notice before the

Industrial Court, and vide order dated 12/11/1993, interim relief was granted. The strikeout notice was treated unfair practice and employees were directed to desist from the same. The employees, however, did not resume services. The petitioner then issued letter to the employees requesting them to resume services. The letters were so issued on 15/09/1993, 26/11/1993, 05/01/1994, 15/03/1994 and 02/04/1994 (Exh.58/1 to Exh.58/5). Since, the employees did not resume services, the petitioner on 01/06/1994 (Exh.60) informed them that from August, 1993, they remained absent without notice and have not resumed services despite request letters issued by the petitioner and issued clear warning that if they fail to resume services, it will be presumed that they have voluntarily relieved themselves from the services. They were called upon to show cause why should they be not relieved from services, but they chose to give no cause nor to resume duty. Accordingly, the petitioner presumed that the employees have voluntarily relieved themselves with effect from 01/06/1994 and consequently their names were deleted from the muster.

05. The employees then allegedly approached the petitioner, who allegedly refused to permit them to resume services. The employees lodged complaint before the Assistant Labour Commissioner, where the petitioner informed the Commissioner that their services were already terminated. Thereafter, the employees lodged complaint before the Labour Court, Nagpur,

which vide impugned judgment, set aside the order of termination for non-compliance of provisions under Section 25F and 25G of the Industrial Disputes Act, 1947. The Labour Court, while rendering such a finding, referred to cross-examination of the respondent-employee. The attention of the employee was drawn to the aforesaid letters (Exh.58/1 to Exh.58/5). The employee admitted that the name and address mentioned in the said letters was correct. The postal receipts were shown. The employee admitted that the name and address on the said postal receipts was also correct. Thereafter, the employee was shown letter dated 01/06/1994 (Exh.60). She admitted that the postal acknowledgment bears her signature (Exh.61).

06. Learned Counsel for the petitioner submits that the notices (Exh.58/1 to Exh.58/5), were sent under postal certificate, thus, carrying a presumption that it would be delivered to addressee if the name and address is correctly mentioned. Despite such status, the Labour Court noted that in the cross-examination, the employee denied having received letter sent by the petitioner to resume duty. The Counsel submits that this finding is contrary to the evidence led before the Labour Court.

07. I have, with the assistance of both the sides, gone through the cross-examination to find substance in the aforesaid submissions. The letter issued through Registered Post Acknowledgment Due was received by the employee. There is no dispute that the letters under UPC were sent to the

employee on the same address. In the circumstances, there is every reason to believe that the letters sent by the petitioner, asking them to resume services, were received by the employees.

08. The employees are harping on the action of removal of these names from muster roll. Mr. H.V. Thakur, learned Counsel for employees relied on 12 judgments to argue that striking off the name of a workman from muster roll by the management amounts to termination of service and such termination is retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 (*hereinafter referred to as "Act of 1947" for short*). According to him, in such circumstances, it is mandatory to follow procedure as laid down under Section 25F and 25G of the Act of 1947. The same having been not followed, both the Courts below have rightly held that the petitioner was engaged in unfair labour practice as envisaged in Item No.1 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (*hereinafter referred to as "Act of 1971" for short*). The Courts below were further justified in directing the petitioner to reinstate employees in service with continuity and to pay 50% back wages from the date of termination i.e. 2nd June, 1994 till reinstatement in the service. The following judgments were cited.

- i. *Delhi Cloth and General Mills Ltd. vs. Shambhu Nath Mukherji and others* - (1977) 4 SCC 415.
- ii. *L. Robert D'Souza vs. The Executive Engineer, Southern Railway*

and another – AIR 1982 SC 854.

- iii. *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and others – (1990)3 SCC 682.*
- iv. *D.K. Yadav vs. J.M.A. Industries Ltd. - (1993) 3 SCC 259.*
- v. *Arun Kumar Mathur vs. Labour Court and another – 1992 SCC OnLine All 941.*
- vi. *Maruti Bhanudas Kamble vs. Bajaj Auto Ltd., Pune and another – (2009) 5 Mh.L.J. 414.*
- vii. *Madhabananda Jena vs. Orissa State Electricity Board and others – 1989 SCC OnLine Ori. 317.*
- viii. *Mathew M.S. vs. Manager, M.J. International – 2003 SCC OnLine Guj. 248.*
- ix. *Uttam Singh vs. Labour Court, Patiala and another – 1985 SCC OnLine P&H 650.*
- x. *Krishna Singh vs. Learned Presiding Officer, Industrial Tribunal, Faridabad and others – 1993 SCC OnLine P&H 1337.*
- xi. *Hari Singh vs. Industrial Tribunal-cum-Labour Court, Rohtak and another – 1992 SCC OnLine P&H 1067.*
- xii. *All India Trade Union of Food Corporation Employees and Workers and another vs. Food Corporation of India and another – 1992 SCC OnLine MP 13.*

09. As against, Mr. Mohgaonkar, learned Counsel appearing for the petitioner submits that employees have without any valid reason issued strike out notice and despite interim relief granted by the Industrial Court vide order dated 12/11/1993, they did not resume services. In fact, they did not resume service despite repeated calls made by the petitioner. The employees have thus abandoned the service and, accordingly, they were informed that their

failure to resume service would mean that they have voluntarily abandoned the services and have chosen to relieve themselves from the services. He further submits that since the employees abandoned the services, there is no necessity to conduct enquiry before deleting their names from muster roll. In support, he has relied upon the following judgments.

- i. *Punjab & Sind Bank and others vs. Sakattar Singh – (2001) 1 SCC 214.*
- ii. *Sukhdev Singh vs. Delhi Development Authority – 2011 SCC OnLine Del 4680.*
- iii. *Vijay S. Sathaye vs. Indian Airlines Limited and others – (2013) 10 SCC 253.*

10. I will refer to the judgments cited by both the parties a little later. Prior thereto, relevant facts require mention.

11. The first and foremost important fact is, the reason for issuance of strikeout notice. According to the employees, they were appointed by the petitioner by taking certain amount and further though their appointment was made on fixed pay scale, they were paid less amount. The aforesaid illegality and irregularity were complained of to various authorities, but to no avail and, therefore, on 02/08/1993, they served to the petitioner the strikeout notice stating therein that if their grievance was not heard by the authorities, they will go on hunger strike with effect from 04/08/1993.

12. Thus, according to the employees, they got appointment by

paying certain amount. In other words, they bribed for seeking appointment. Such appointment cannot be said to be an appointment by following due process of law.

13. The Industrial Court appears to have taken a note of such stand taken by the Union and the employees and having found the same to be unfair, passed an order dated 12/11/1993 directing the employees to desist and cease from committing unfair labour practice during pendency of their complaint

14. Once such an order was passed, the employees were duty bound to resume services. It is worth mentioning here that the employees were appointed on the posts of Superintendent, Instructor, Accountant, Clerk, Peon, Librarian, Cook, Molkarin, Paharekari etc. The employees were appointed in a school run by the Society for physically handicap students. It was a residential school. In the circumstances, when the employees like Cook, Molkarin, Caretaker, Helper, etc. go on leave/strike, it will seriously hamper the functioning of the school. Considering the nature of service and once the action of employees to go on strike was faulted with by the Industrial Court, they ought to have resumed duties immediately.

15. In this regard, the evidence led before the Labour Court would favour the employer. The employees failed to show that they indeed made an attempt to resume services. The only evidence put forth is a statement on

oath. In normal circumstances, if an employees is not permitted to resume service, he/she would make grievance within a reasonable time. As such, the employees averred that on 06/12/1993, they had filed application under Section 48 read with Section 7 of the Act of 1971 for contempt of Court. However, neither copy of application nor any cogent material was placed before the Court in support. In fact, the petitioner's Counsel argued that no such application was ever filed. The employees were, accordingly, called upon to place on record an evidence to show that such application was filed. The Counsel for the employees submits that despite efforts, no such record was found. In the circumstances, plea put forth by the employees that they reported on duty and were not allowed to resume the same and, therefore, had filed proceedings for contempt of Court, remains not proved.

16. The petitioner has, however, placed on record copy of letters (Exh.58/1 to Exh.58/4) sent to the employees under Certificate of Posting calling upon them to resume services. These letters were issued in the month of September, 1993, January, 1994, March, 1994 and April, 1994. Thereafter, final call letter was issued on 01/06/1994 (Exh.60) calling upon the employees to join services mentioning therein that despite repeated requests, they have not resumed duties and further making clear that if they fail to resume duty, they will be presumed to have voluntarily relieved themselves from service.

17. The evidence, as discussed earlier, show that the employees, despite receiving letter to resume duties, have not responded to petitioner's call. It is only when the final letter was received, the employees have taken some action.

18. As such, the employees have deposed that they approached the employer to resume duty and were not allowed, however, in the cross-examination, the employee failed to tell the date on which she had gone to resume duty. She then deposed that she has not placed on record any document to show that such attempt was made.

19. Thus, the evidence shows that despite order having been passed to desist and cease from unfair labour practice of going on strike and despite repeated calls from the petitioner-employer, the employees did not resume the duty.

20. The aforesaid act of the employees, to my mind, is not only abandonment of service but would amount to seeking voluntary retirement. In such circumstances, the act of deletion of name of the employees from muster roll cannot be said to be a positive act at the hands of the employer, but will be an act of a consequential nature. One cannot expect the employer to indefinitely wait for the employees to resume services. The employees remained absent for about nine months viz. from 02/08/1993 to 02/06/1994. Such absence without any intimation and by ignoring the call letters of the

employer, would amount to abandonment of service coupled with presumption that the employees chose to voluntarily retire from service. This is not a case where one can attribute positive act by the employer in deleting the name of the employees.

21. The Supreme Court in the case of Sakattar Singh (*supra*), cited by the petitioner in somewhat identical facts where the employee proceeded on leave for three days, but did not report to duty and thereafter despite three communications sent to him by the employer calling upon him to resume duty, the employee remained absent unauthorisedly for a period of 190 days (in the present case, unauthorised absence is 270 day and in context with the interim orders passed by the Industrial Court, the unauthorized absence is seven months i.e. 210 days), took a note of Clause XVI of IV of bipartite settlement, wherein it was provided that 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 by the management and upon issuing notice by the management calling upon the employee to report to duty within 30 days, if the employee fails to join, the employee will be deemed to have voluntarily retired from the bank's service. The Supreme Court noted that in such circumstances to relieve employee from service is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation

thereto. The Court further noted that the principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case and in such circumstances, enquiry may not be necessitated.

22. In the case of Sukhdev Singh (*supra*), the Division Bench of Delhi High Court took note of the fact that the employee was unauthorisedly absent for a long period of 22 months and held as under :

“8. The rule that abandonment of employment is a misconduct and to be actionable, domestic enquiry is a must cannot be said to be of absolute nature. The Apex Court in *Punjab & Sind Bank v. Sakattar Singh*, (2001) 1 SCC 214 held that in the face of the standing orders of the Bank providing a procedure for treating absentee employee to have deemed to have voluntarily retired after a particular period of unauthorized absence, no domestic inquiry was required to be conducted. Similarly, in *V.C. Banaras Hindu University v. Srikant*, (2006) 11 SCC 42; AIR 2006 SC 2304 a provision for deemed abandonment from service was held to be permissible in law so long as the action taken was fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. To the same effect is the recent dicta in the *The Regional Manager, Central Bank of India v. Vijay Krishna Neema*, (2009) 5 SCC 567, AIR 2009 SC 2200. Mention may also be made of the judgment of the Division Bench of this Court *M.K. Ahuja v. Syndicate Bank*, (2011) 1 LLJ 325 also upholding a case of abandonment of employment and of *Viveka Nand Sethi v. Chairman, J & K Bank Ltd.*, (2005) 5 SCC 337 also laying down that an employer can arrive at a satisfaction that the workman has no intention to join his duty and raise a legal fiction and which though is of wide import but once the action on the part of the employer is found to be fair, the onus is on the workman to prove to the contrary.

9. *The judgment of the Apex Court in Jai Shankar (supra) relied upon by the counsel for the appellant before this Court is also to the effect that though an employer may visit the punishment of discharge or removal from service on an employee who has absented himself but not without at least telling him that it proposed to remove him and not without giving an opportunity of show cause as to why he should not be removed. The same also thus cannot be said to be coming to the rescue of the appellant workman.*

10. *In the present case, the appellant workman was initially engaged as a Muster Roll employee and thereafter was a Work Charge employee and the finding of the Industrial Adjudicator of absence for 22 months without intimation and of failure to establish the case set up of illness has attained finality. Even if the domestic inquiry is held to be necessary, the failure to hold the said domestic inquiry did not prevent the respondent from establishing misconduct before the Industrial Adjudicator and which misconduct of unauthorized absence stands established. The Supreme Court in Delhi Cloth & General Mills Co. vs. Ludh Budh Singh, (1972) 3 SCR 29, The Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management, (1973) 1 SCC 813, The Cooper Engineering Ltd. v. Sh. P.P. Mundhe, (1975) 2 SCC 661, as also in Bharat Forge Co. Ltd. v. A.B. Zodge, (1996) 4 SCC 374 has held that even where no domestic inquiry is held, the employer is entitled straightaway to adduce evidence to justify its action and Industrial Adjudicator is bound to consider the said evidence. For this reason also, the learned Single Judge was correct in not interfering with the Award.”*

23. Thus, the Division Bench of Delhi High Court, taking stock of the judgments of the Supreme Court, observed that an employer can arrive at a satisfaction that the workman has no intention to resume his duty and raise a legal fiction and if the action on the part of the employer is found to be fair,

the onus will be on the workman to prove to the contrary. The Court also held that in such cases, domestic enquiry may not be necessary. The Court further held that even where no domestic inquiry is held, the employer is entitled straightaway to adduce evidence to justify its action and Industrial Adjudicator is bound to consider the said evidence.

24. Thus, two important principles of law have been highlighted. One is that, a long standing unauthorised absence would enable the employer to draw an inference that the workman has no intention to resume duty, unless the workman proves otherwise. The second is that once the long standing unauthorised absence of the employee is established, failure to hold domestic enquiry would not prevent the employer from establishing misconduct before the Industrial Adjudicator.

25. In the present case, the long standing unauthorised absence of employees has been duly established. There is no evidence that the action on the part of employer was not fair in the sense the petitioner had given reasonable opportunity to the employees to resume services but they chose to not resume duty. In the circumstance, even if the Courts below were of the view that holding domestic enquiry was necessary, they ought to have assessed the evidence led by the parties to find out, whether the misconduct has been established. In my view, the evidence is writ large on the point of misconduct by the employees. Neither did they resume services at their own,

nor did they respond to repeated calls by the petitioner. With such conduct, the petitioner was left with no other alternative but to relieve the employees and appoint fresh candidates, which, in fact, has been done in the present case. I am informed that with passage of time, fresh candidates were appointed in place of the employees, whose services have been approved by the Social Welfare Officer. At present, some trades of the school have been closed and some posts are abolished. The hostel is also closed. Consequently, the posts, where some of the employees were working are also abolished.

26. In the case of Vijay Sathaye (*supra*), the Supreme Court, while recognizing the right of the employee to withdraw from service, held thus:

“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.

13. In M/s. Jeewanlal (1929) Ltd. v. 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 - (1975) 3 SCC 108)

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 Prakash – (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 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. Keshava Rao, (2005) 11 SCC 229 and Bank of Baroda v. Anita Nandrajog, (2009) 9 SCC 462.*

27. As could be seen, the Supreme Court held that long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee. The Court further held that 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. The Court also 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 and in such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. Most importantly, the Supreme Court held that 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 the service.

28. In the present case, the evidence is writ large on the point of intention of employees to abandon services. In the circumstances, there was no need to hold an enquiry or to give any notice. The petitioner, however, had given repeated notices calling upon the employees to tender explanation of absence. The employees failed to resume services and also failed to submit any explanation. Thus, they abandoned the services and were, accordingly, relieved. There was no need to hold enquiry. In any case, with the evidence, as has been discussed hereinabove, if the Courts below were of the view that domestic enquiry was necessary, they ought to have assessed evidence to find out, whether misconduct has been established. As stated earlier, there is sufficient evidence to show that the employees were guilty of misconduct. The action of the petitioner, thus, could not have been faulted with.

29. Coming to the judgments relied upon by the employees, it

appears that the Counsel has not gone through the facts of each case. The emphasis appears to be to cite numerous judgments on one point to get support on the basis of quantity than quality, which to my mind, is futile exercise.

30. These judgments are relied upon in support of the argument that striking off names of the workmen from roll by the management amounts to termination of service and such termination would be retrenchment within the meaning of Section 2(oo) of the Act and would thus require compliance under Sections 25F and 25G of the Act of 1947. I have gone through the judgments to find that the facts of each case are different than the facts of the instant case.

31. I will refer to the facts of few cases to avoid uncalled lengthening of judgment. In the case of Shambhu Nath (*supra*), the employee was promoted to the post of Motion-Setter. The said post was abolished in reorganization in the management's establishment. The management offered him to work on any other suitable post and, accordingly, the employee was given a job of a trainee on probation for the post of Assistant Line-Fixer. The management, however, found him unsuitable despite extension of probation and, accordingly, offered him a post of Fitter on the same pay. The workman wrote to the management to give him a further chance to show his efficiency in his job and if he failed to improve, he would voluntarily tender his

resignation. As such, the workman was on leave when he received the offer letter to work as Fitter. Since, he did not get response from the management to his counter offer, he did not resume service. The management after about four months, issued a letter stating that his name has been automatically struck off from the roll for his continuous absence without intimation.

32. In the above set of facts, the Supreme Court found that there were no valid reasons for the management to not immediately send a reply to the workman informing its inability to agree to his proposal and in such case, the only alternative left with the management was to retrench his services, instead the management kept silence and after four months, struck off the name of workman from roll.

33. This is a case where one may argue that the act of management in striking off name is a positive act and termination of service would amount to retrenchment within the meaning of Section 2(oo) of the Act of 1947. Such is not the case here. The employees here, not only got themselves involved in an illegal strike but despite order directing them to desist from such unfair labour practice, they did not resume service. The petitioner thereafter made repeated requests calling upon the employees to resume services, but they did not. Thus, the employer was left with no other alternative but to issue letter saying that they will be relieved from service as chosen by them. Even this letter was not responded. If such was conduct/attitude of the employees,

continuance of their names on muster roll is an act of wasting time and stationery. The employer, therefore, was left with no alternative but to strike off the names of the employees from the muster roll. Such an act cannot be said to be a positive act of termination of service, but is a consequence invited by the employees.

34. In the case of L. Robert D'Souza (*supra*), the employee was employed as casual labour. During the course of his 26 years continuous service, in which he was transferred to multiple places, his transfer from Ernakulam was seriously objected by him. He took up the matter with higher authority and was re-transferred to Ernakulam. He pursued his objection for about 11 months and during said period, he did not report to duty. However, the concerned Ministry advised the employer to re-transfer him to Ernakulam and to pay him wages for the intervening period for which he did not report for duty. His services were, however, terminated for unauthorised absence in such peculiar facts, the Supreme Court reiterated a consistent view taken by it that the termination of service for any reason whatsoever except the excepted categories under Section 2(oo) of the Act of 1947 would constitute retrenchment. Here, I may note the exception carved out under Section 2(oo) of the Act which are as under :

(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

[(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 that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;]

35. The second category is an exception, where the workman chooses to take voluntarily retirement, which he can either tender in writing or, to my mind, could be gathered from his conduct. In the present case, the conduct of employees show that they have willingly abandoned the work meaning thereby that they have chosen to retire voluntarily. The act of filing complaint after receiving the letter under R.P.A.D will have to be tested in the light of previous conduct of the employees. Such complaint, in the present case, can be said to be an after thought. I may note here that some employees have approached the Labour Court within 90 days and some have approached after 90 days. Thus, the reaction is not spontaneous and carries an element of after thought theory. Such an act cannot be taken aid of to argue that, had the employees chosen to take voluntarily retirement, they would not have lodged complaint against the petitioner. The employees here have obtained

employment by illegal means (because they themselves averred in complaint that they paid money to Management to obtain employment). They carry a blame of participating in the illegal strike and despite order of the Industrial Court to desist from such practice, they did not resume duty. Such unauthorised absence caused serious impediment in the working of the school, which was meant for the handicapped students, compelling Management to make alternative arrangement. The absence continued despite repeated calls from the Management. Such absence amounts to abandonment of services and has an element of voluntary resignation. In any case, the prolonged absence without intimation amounts to misconduct, which has been established before the Courts below and thus, defect, if any, in terminating their services without enquiry stood cured.

36. In the case of Punjab Land Development (*supra*), several applications were decided together. The employees therein were found absent for valid reasons though they did not intimate to the employer. In one case, few employees assaulted the Supervisor and being afraid of police, remained absent. Their services were terminated for abandoning the work. In other case, couple of workmen were discharged for their trade union activities. The question that fell for consideration before the Supreme Court was, whether the termination of services would amount to retrenchment. The Court referred to various judgments to hold that retrenchment under Section 2(oo)

of the Act of 1947 means termination by the employer of the service of a workman for any reason, whatsoever, except those expressly excluded in the section. As noted earlier, one of the exceptions is to tender voluntarily resignation, which in the present case, could be gathered from the conduct of the employees.

37. Similar are the facts in other cases relied upon by the employees and, therefore, none of the judgments will be of any assistance.

38. The Courts below failed to appreciate the evidence by which the petitioner clearly established that the employees abandoned the work by choosing not to resume duties despite repeated calls by the petitioner. Such an act may be termed as voluntarily resignation of the employees. In the circumstances, deletion of their names from muster roll cannot be said to be a positive act by the petitioner. The said act was consequential action of failure of employees to resume duties despite repeated calls from the employer. The Courts below further committed error of law by not examining the issue of misconduct and proof thereof during trial. As held by the Supreme Court in Punjab Land Development (*supra*), if for any reason, the Court was of the view that the petitioner ought to have conducted disciplinary enquiry before the alleged termination of the services of the employees, the petitioner had right to prove misconduct during trial, which they have successfully established in the present case.

39. For the aforesaid reasons, the judgment and order passed by both the Courts below are unsustainable. The writ petitions are accordingly allowed. The impugned judgments and orders dated 27/09/2016 passed in Revision Application Nos.14 to 18 of 2011 and dated 26/11/2018 passed in Revision Application (ULP) Nos.24 to 30 of 2015 by the Industrial Court, Nagpur are quashed and set aside. So also, the impugned judgments and orders dated 03/12/2010 passed in Complaint (ULP) Nos.524, 533, 512, 527 and 530 of 1994 and dated 12/01/2015 passed in Complaint (ULP) Nos.526, 554, 524, 531, 532, 523 and 529 of 1994 by the Labour Court, Nagpur are also quashed and set aside. The complaints filed by the respondents-employees are hereby dismissed.

40. Rule is made absolute in the above terms with no order as to costs.

(Anil L. Pansare, J.)

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