

## HR Law Hotline

November 15, 2016

### EMPLOYMENT TERMINATION WITHOUT NOTICE AND INQUIRY JUSTIFIED FOR UNAUTHORISED LONG LEAVE

- Notice or (disciplinary) inquiry not required to terminate employment for abandonment of service as a result of unauthorized long leave.
- It is reasonable for an employer to presume that the employee is not interested in the job when he/she is absent from work for a long duration without authorization of the employer.

The presumption by the employer that the employee is not interested in the job when he/she is absent from work for a long duration without the authorization of the employer, has been considered as reasonable. Based on a recent judgment<sup>1</sup> of the Punjab and Haryana High Court (“**High Court**”), a notice or (disciplinary) inquiry was not required to terminate employment for abandonment of service.

#### FACTS

The employee (petitioner) was a science teacher working with the employer (a government school) since 1992. The employee had applied for a long leave of 3 years from February 2010 until February 2013. Although her application was forwarded by the school’s headmaster to the District Education Officer, the employee did not receive any communication in terms of either an approval or a rejection. The employee still proceeded on her leave. Subsequently, in May 2011, the employee made a request for voluntary retirement, which request was rejected by the employer in September 2012 on the ground that she had neither served for 20 years nor attained the age of 50 years. The employer subsequently passed an order of dismissal in May 2013 on the ground that the petitioner had remained absent from work from March 2010, without the approval/authorization of the employer.

The employee filed a petition before the High Court for issuance of a writ of certiorari for setting aside the termination order passed by the employer.

#### JUDGEMENT

The employee contended that she was under the impression that her leave had been sanctioned and that the dismissal order was wrongly passed by the employer without intimation and without affording her an opportunity of hearing. The High Court observed that the employer had not intimated the employee that her request for long leaves was accepted and therefore there was no reason for the employee to believe that her leaves had been sanctioned. The High Court also observed that the employer had issued a public notice in a local newspaper giving the employee 30 days to explain her unauthorized absence from duty. However, the employer did not receive any written request from the employee nor did the employee appear personally before the employer. In addition to the above, the employee also left the country without seeking any prior permission at the cost of the interests of the children. Therefore, the order of dismissal was passed by the employer on the ground that the employee remained absent from duty for years together without informing the employer and did not turn up even after publication of notice in the newspaper. The High Court held that in cases of long unauthorized absence, it is reasonable to presume that the employee has abandoned her job and was not interested in pursuing the job. The High Court also observed that the employee had challenged the order of the employer after a long delay, which was also un-explained.

#### ANALYSIS

Courts in India have at various instances examined the requirement of an internal (departmental) inquiry prior to termination of employment. This judgment helps clarify the fact that an inquiry need not be conducted in cases of long unexplained absence from employment. The Supreme Court of India has also previously observed that long unauthorized absence may reasonably give rise to an inference that the employment is intended to be abandoned by the employee.

This judgement helps re-confirm the position that the requirement of departmental enquiry and *audi alteram partem*<sup>2</sup> can be dispensed with in certain exceptional circumstances. Therefore it can be concluded that a regular departmental enquiry is not a ‘must’ before termination of contract of employment in all cases and in all situations.

This judgment should be a relief for employers who are often faced with the challenge of conducting a departmental inquiry for terminating employees who remain absent for long durations without any authorization or intimation. However, it may be noted that the instant case concerns an employee who was absent from work for a considerably long period of 3 years and hence there could be a practical challenge applying the *ratio decidendi* in this judgment to instances, say, when an employee has absented himself/herself for few days without prior authorization/intimation. Accordingly and to the extent possible, it is recommended that employers follow the principles of natural justice prior to terminating employment for misconduct.

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<sup>1</sup> *Tejinder Kaur v. State of Punjab and another*

<sup>2</sup> Latin phrase meaning '*listen to the other side*'

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