

HR Law Hotline

January 25, 2010

HABITUAL ABSENCE FROM WORK CONSIDERED TO BE A CAUSE FOR EMPLOYMENT TERMINATION

In a recent case throwing more light on the considerations in relation to the problem of habitual absenteeism from the workplace, the Bombay High Court (“**Court**”) has reiterated that habitual absence from workplace without sanctioned leave for a very long period amounts to misconduct on the part of the employee. The Court gave its decision in the case of *Pandurang Vithal Kevne* (“**Petitioner**”) Vs. *Bharat Sanchar Nigam Limited* (“**BSNL**”) & *Union of India*¹.

FACTS OF THE CASE

The Petitioner was working as an examiner with BSNL since 1977 until his services were terminated by BSNL on account of misconduct. This was pursuant to a charge sheet issued to him for misconduct on account of unauthorized absenteeism. The Petitioner appealed against the order of termination of services to the Central Government Industrial Tribunal, Mumbai (“**Tribunal**”). The Tribunal, by its award dated December 22, 2006 held that the charge of misconduct against the Petitioner was valid and that under such circumstances the termination of service was a proper punishment.

The Petitioner is alleged to have been guilty of misconduct by remaining absent for a total period of 355 days, 285 days and 245 days in the years 1995, 1996 and 1997 respectively without prior permission or intimation to his employer. The absence from duty during the aforementioned periods was validly explained by the Petitioner and BSNL also regularized these leave days by sanctioning different types of leaves (earned/ half-pay/ casual/ annual/ unpaid leaves).

Rule 31(g) of the employer’s Certified Standing Orders states that, (i) habitual absence without leave or (ii) absence without leave or intimation for more than ten (10) days amounts to misconduct on the part of the employee. BSNL also contended that the Petitioner stands in violation of Rule 3² of the Central Civil Service (Conduct) Rules, 1964 which inter alia requires every government servant to maintain absolute integrity and devotion to duty.

Further reliance was placed upon the decision of the Supreme Court in the case of *Delhi Transport Corporation vs. Sardar Singh*³ wherein it was held that where an employee absents himself from duty, without sanction, for a very long period, it prima facie reflects a habitual negligence in duties and lack of interest in work.

On the question of subsequent grant of leaves by BSNL, BSNL emphasized that the absence of the employee is required to be regularized in some way for the purpose of maintaining a correct and adequate record of the duration of service of the employee⁴. Moreover, even if the absence of the Petitioner from duty was subsequently regularized by granting leave with or without pay, the Petitioner cannot escape the consequences of misconduct because it will not be sufficient to conclude that the leave days availed by the Petitioner were authorized.

In addition to the above, BSNL admitted that it awarded a penalty of reduction of pay to a lower stage for a period of one (1) year without cumulative effect, to the Petitioner for remaining absent from duty, however the Petitioner showed no signs of improvement in his attendance despite this penalty.

JUDGMENT

After considering the facts and circumstances of the case, the Court upheld the decision of the Tribunal and held that the Petitioner is guilty of misconduct alleged against him and hence is liable to be dismissed from the services of his employer, BSNL.

ANALYSIS

The Court in the instant case maintained the pro-discipline stance as advocated by the Hon’ble Supreme Court of India⁵ while dealing with cases of habitual absenteeism. Unauthorised habitual absence from the workplace is a factor that establishes irresponsibility and lack of interest in work on the part of the employee resulting in misconduct. In a world of competition where performance and productivity are of essence, this judgment seems to be a step in the right direction. It is however pertinent not to make a sweeping generalization as an employee may need to take leave without prior sanction because of his grave condition of health or similar conditions, in which cases the punishment of dismissal from service may appear to be excessive or disproportionate⁶.

- Harshita Srivastava & Vikram Shroff

Research Papers

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

India’s Oil & Gas Sector— at a Glance?

March 27, 2025

Artificial Intelligence in Healthcare

March 27, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India’s Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI’s Deal Value Test

February 22, 2025

Securities Market Regulator’s Continued Quest Against “Unfiltered” Financial Advice

December 18, 2024

Digital Lending - Part 1 - What’s New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

1 Writ Petition No. 2584 of 2007.

2 Central Civil services (Conduct) rules, 1964 states that- (i) every government servant shall at all time maintain absolute integrity, (ii) maintain devotion to duty, (iii) do nothing which is unbecoming of a Government servant.

3 AIR 2004 SC 4161

4 The Supreme Court in the case of State of *Madhya Pradesh vs. Harihar Gopal* 1969 SLR (SC) 274 held that order granting leaves was only for the purpose of maintain correct record of service.

5 North Eastern Karnataka R.T.Corpn. vs. Ashappa AIR 2006 SC 2164

6 Shri Bhagwan Lal Arya vs. Commissioner of Police, Delhi & Ors. (2004) 4 SCC 560.

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

April 01, 2025

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

SIAC 2025 Rules: Key changes & Implications

February 18, 2025