No charge of Unauthorized Absence on Employee after Expiry of Notice Period!

The charge of Unauthorized Absence on Employee is inapplicable after Expiry of Notice Period!

(A) The courts of law are Parens Patriae: Parent to the Nation, Legal protector of citizens unable to protect themselves and have risen to defend the interest of employees time and again and have saved the interest, employability of employees that are attacked by employers and it's attorney's that have many times become vindicating, zealous; in HR/Personnel/Admin/Legal cells, and bosses.

Such employers and their attorney's and bosses may leave NO stone unturned to vindicate the employees and cause intentional damage.

The bosses may even proceed to misuse the private service rules/conditions drafted by establishments/employers.

The employee was charged with Unauthorized Absence after expiry of Notice Period and charge of unauthorized absence was leveled after expiry of notice period and severe and serious punishment of 'Removal from Service' was awarded.

The employee was able to save his hard earned monies, employability, and future interest by producing irrefutable written record and evidence before the court of law and by wisdom and brilliance of Judges in Court of Law.

The court of law analyzed the matter, thoroughly and saved the employee from effects of severe and serious punishment awarded by so called service rules and undid the damage caused to employee.

(B) Notice Period, Notice pay in lieu of notice period has been bothering community of employees since years, decades, in cases of Resignation, Termination, VRS etc …

Employees are harassed and employability is affected at times due to imaginary, invalid, illegal, unprecedented, non-beneficial conditions attached with Notice Period that are either inserted in offer/appointment letter or are NOT communicated in writing at all or kept at some internal/private portals about which NO sufficient information is supplied. More so the internal/private portals can be changed any time and access can be blocked or denied any time, to employee.

In many cases NO offer/appointment letter is issued to employee and even NO printed version of applicable service rules/conditions are communicated and all of sudden establishments/employers/attorney's of employer, start making verbal reference to some rules after employee has resigned. Employee's often wonder, where from all of a sudden, imaginary rules are cropping up!

Employees that are ill informed, are not united, are not supported are easy target and face unprecedented harassment.

Employees in be it; Private/PSU/Government Establishments, that are well read, properly informed, united and have collected copies of communications on record while in employment, all service rules/conditions and have built irrefutable written

Similar Forum Post

- claim matter
- IS SERVICE AGREEMENT ON STAMP PAPER VALID IN LAW
- attachable benefits of an employee
- About credit card recovery
- Service Bond Query
- about labour law
- Suspension during Half pay leave

More »

Browse by Category

Business Law | Civil Law | Constitutional Law | Criminal Law | Family Law | Labour & Service Law | Legal Documents | Intellectual Property Rights

record can handle the matters and defend their interest, hard earned monies and future employability.

Each employee should do so and be smart and act smart.

(C) Notice period may also be inserted in private schemes announced by employers.

Notice period is part of service conditions that are governed by enactments, extent rules that apply to establishment and employee.

The employees that are not working in private establishments may still be covered as 'Workman' as in Industrial Dispute Act. The employees that are not covered by above enactments should look into extent service rules and conditions applicable to the concerned establishment and must obtain copies of such rules.

Industrial Disputes Act 1947 does not lay down notice period for employees and lays down the same for employers in cases of retrenchment.

Other enactments e.g; (Name of the State) Shops and Establishments Act; This enactments may lay down notice period for employer and not for employee and in case of some states it may mention for both employer and employee. Notice Period and other service conditions e.g; leave, in case of the persons working in establishments covered this enactment and are covered by the def. of 'Employee' as in this Act, shall be governed by this Act. The employer can offer superior benefits but not inferior than provided for in the Act.

Standing Orders under Industrial Employment Standing Orders Act:

Model Standing orders is a statue; Sec;13 lay down Nil notice period during probation and max. 30days notice period after confirmation of service.

Standing orders are certified on the lines and spirit of Model Standing orders.
Standing Orders once certified become Certified Standing Orders and is Instrument of Law.

Standing Orders shall prevail upon T&C in any private agreement that employer or its attorney's has drafted or crafted and has signed with employee e.g; Offer letter, Appointment letter, Contract of employment, Employee hand book, HR policy, Service Rules etc etc

It cannot be said that employee is bound to serve notice period as per appointment letter or rule of the company contrary to statutory enactments

(Some of which are mentioned above) applicable to establishment/employer/employee.

Same is true for other service conditions e.g. Leave, service certificate!

The unfortunate fact is that majority of the employees are not even aware:

What are the applicable Enactments!
What are the applicable Service Rules/conditions!
What are the provisions of Enactments, Service Rules/conditions and how to benefit from the application of such provisions!
And many of the employees do not download and obtain copies of service rules drafted by employer for employees.

The employee can apply for and avail leave during notice period and offer notice pay in lieu of notice period and clauses of applicable enactments are clear on this aspect and even service rules drafted by employer may also provide for it.

The provisions of applicable enactments and Service Rules/conditions can aid to get away without any adverse effect on hard earned monies, future employability, and Employees can achieve such goal by their own skills, knowledge, or by leaning on Works Committee (authority as per ID Act), Grievance Redressal

Committee (Notified also in some states), employee's unions, employee's unions embraced by trade unions, trade unions, labor officials, counsel specializing in Labor/service matters, and if the need be from courts of law.

The employee's that are properly informed would know; which are the forums and if required jurisdictional courts in their specific matters of dispute thrusted upon them by bosses, employers, and attorney's of employers.

(D) Various judgments leave NO scope of doubt that Enactments, Statue, Interment of a Law shall prevail upon private agreements/rules drafted by employer and employee can take advantage of more beneficial provisions in case more than one Enactment applies and also the provisions of extent Service Rules cannot be exploited with private interpretations by employer and its attorney's.

(1) While addressing the conflict started by management between Industrial Disputes Act 1947 (**1947 Act**) and Punjab Shops and Commercial Establishments Act, 1958 (**1958 Act**); the court commented that:

16. Moreover, if Section 25-J of '1947 Act' is read along with Section 33 of '1958 Act' any doubt regarding the applicability of the provisions of '1947 Act' to the employees of shops and commercial establishments stands removed. A conjoint reading of these provisions show that the employee has a right to take advantage of the more beneficial provision.

Punjab-Haryana High Court
Ram Sumer Vs. Presiding Officer
Bench: G Singhvi, S Sudhalkar

(2) 52. It is now well known that the provisions contained in the certified Standing Order have the force of law. The provisions of the Standing Order certified under the Industrial Employment (Standing Orders) Act, 1946 would prevail over the contract of service. Violations of the provisions of the certified Standing Order in

the matter of disciplinary action as against a workman would render the order of dismissal passed against him void and of no effect. In this situation, there cannot be any doubt that Jaiswal became entitled to damages for wrongful termination of contract of service.

Patna High Court
Lilawati Devi And Ors. Vs. Central Coalfields Ltd.

(3) Held; (3) The inconsistent part of the agreement is ineffective and unenforceable.

(b) The terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence on the enforcement of the Standing Order. If a prior agreement inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Order should also not prevail.

Labour Court may interfere with the order of discharge where it is satisfied that it was made mala fide or was a measure of victimisation or unfair labour practice.

It has also been held by this Court that the Labour Court may interfere with the order of discharge if it finds that the order is arbitrary or capricious or so unreasonable as to lead to the inference that it is not made bona fide.

Supreme Court of India
Western India Match Company Ltd Vs. Workmen

(4) Held; (b) Standing Order 22 is a penal statute in the sense that it provides for imposition of penalty on proof of misconduct. For a penalty to be imposed it must be quite clear that the case falls within both the letter and the spirit of the statute.

It is a general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning.

Supreme Court of India

Glaxo Laboratories vs. The Presiding Officer, Labour

(E) Central Government Act
Article 226 in The Constitution Of India 1949

226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(F) THE GENERAL INSURANCE (CONDUCT, DISCIPLINE AND APPEAL) RULES, 1975

23. Penalties :-
Major Penalties :-

(f) Compulsory retirement;

(G) 4. The facts are very few and simple. The petitioner was employed by Respondent No. 1 as a Manager.

5. The submission of the petitioner is that in 1995, the Government of India, Ministry of Finance (Department of Economic Affairs) (Insurance Division) notified in the Gazette dated 28th June, 1995 a scheme called "General

Insurance (Employees) Pension Scheme, 1995". The petitioner communicated his option of joining the scheme.

Para 30 of the scheme provides for voluntary retirement and reads thus:

(30). Pension on voluntary retirement:

(1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service:

(2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority: Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

7. The petitioner states that this application was received and duly acknowledged. Further, by letter dated 12th April, 2001 the petitioner requested that the notice period of 3 months may be reduced to one month as was done by respondent No. 1 in other cases. The petitioner confirmed his willingness to pay 2 months salary in lieu of notice period. Though the scheme envisages 90 days notice, the petitioner sought curtailment of notice period as above.

8. It is the case of the petitioner that he heard nothing from respondent No. 1 in response to his application for voluntary retirement. Therefore, he presumed that respondent No. 1 has no objection to the petitioner retiring voluntarily from service in terms of the application dated 5th March, 2001. He proceeded on the basis that he had voluntarily retired with effect from 16th April, 2001.

9. The petitioner submitted an application for permission to accept commercial employment which was also received. This application was made in terms of para 49 of the scheme which reads thus:

(49) Commercial employment after retirement:

The petitioner has thereafter joined M/s Bajaj Allianz General Insurance Company. He was in touch with respondent No. 1 for the purposes of collecting his retiral dues. He was, however, shocked and surprised to receive a letter dated 1st October, 2001 addressed by the then General Manager of the first respondent informing him that the petitioner's twin requests, as above, have been rejected for want of vigilance clearance. It was pointed out that the petitioner has unilaterally stayed away from duty which act would be termed as "unauthorised absence" from service and that is how he would be dealt with.

10. Upon receipt of this letter, the petitioner moved the first petition being Writ Petition No. 44 of 2002 in this Court.

11. On account of interim relief being refused, the petitioner received a show cause notice dated 20th September, 2002 alleging abandonment of service. The petitioner filed two replies thereto. His case was clear in as much as he contended that the Employer-Employee relationship does not subsist the moment period of 90 days prescribed in para 30 of the scheme has come to an end. Since the company refused to communicate anything to the petitioner with regard to his voluntary retirement application within a period of 90 days, then, after the said period the petitioner ceases to be in employment and stands retired in terms of para 30 of the Scheme.

12. This stand of the petitioner was not acceptable to the first respondent and it proceeded to pass the impugned order holding therein that on account of admitted facts there is abandonment of the service by the petitioner which act is also punishable and, therefore, in the peculiar case of the petitioner it is permissible to impose penalty without holding any enquiry.

13. The action initiating the Enquiry and imposing penalty is subject matter of challenge in this petition.

17. On the other hand, …. the respondents submits that ……. the act of the petitioner, in staying away from service unauthorisedly has to be viewed seriously and for which penalty prescribed by the Rules can be imposed upon him. That such a penalty (removal from service) can be imposed without fulfledged departmental enquiry, in an appropriate case, is not being disputed at all. There is no question of any voluntary retirement from service nor can it be a case of resignation by the petitioner.

30. …It is true that the petitioner proceeded upon the basis that his application for voluntary retirement is accepted. He proceeded for commercial employment even before the period stipulated in the notice came to an end. Thus, without waiting for 90 days to get over he proceeded in the matter. …… this act of the petitioner disentitles him to all benefits under para 30 of the scheme. It is clear that by his own conduct he has waived the notice and right, if any, flowing therefrom.

It is not possible for us to accept these submissions.

Assuming that the act of the petitioner in not reporting for work after 16th April, 2001, is contrary to para 30 of the scheme which postulates minimum 90 days notice period, yet, nothing prevented the respondents from communicating to the petitioner the refusal in terms of the proviso to para 30(2) within the period of 90 days or if the vigilance clearance was awaited or investigation ordered by the Special Judge, communicate that fact as well, at least by August, 2001.

The communication dated 1st October, 2001 rejecting permission to retire voluntarily for want of vigilance clearance is bad in law being contrary to the scheme itself.

31. It is in the facts peculiar to this case and considering the clear language of the scheme that it is not necessary to deal with any larger issue and controversy. The petitioner could not have been proceeded with for abandoning his services

when the conduct of the respondent is contrary to the scheme. The scheme and the para under consideration will have to be read in its entirety.

32. In the result all proceedings which have been commenced pursuant to the communication/letter dated 1st October, 2001 including the charge sheet and enquiry so also the subsequent punishment are vitiated and, therefore, deserve to be quashed and set aside.

33. However, nothing prevented the respondents from initiating appropriate proceedings and refusing permission to retire in the face of this order within the period prescribed or the notice period i.e. 90 days.

The permission to retire could have been refused by the respondents within 90 days from 16th April, 2001. That having not been done.

In the light of the conclusions drawn by us, the decisions of the Supreme Court on the concept of abandonment of service and the penalty prescribed for unauthorized absence are totally inapplicable.

34. Consequently, writ petition No. 303 of 2007 succeeds. Rule is made absolute in terms of prayer Clause (a)……. also he is willing to pay the amount of two months salary in lieu of notice,……. This order is passed because the petitioner had already taken up commercial employment.

35. In the light of the order passed in Writ Petition No. 303 of 2007 writ petition No. 44 of 2002 does not survive and is accordingly disposed of.

Jitendranath Nayer vs The Oriental Insurance Co. Ltd.

(1) Writ Petition No.303 of 2007
(2) Writ Petition No.44 of 2002

Bombay High Court
Bench: S Kumar, S Dharmadhikari

Kumar Doab
on 19 September 2017

Published in Labour & Service Law
Views : 1200

Other Articles by - Kumar Doab

Report Abuse

← Previous

Next →

Recent Comments

Total: 4

Login to post comment

manda venkateswara gupta 19 October 2017
Extremely well written. Talent migration due to this type of issues. please send your blog site details to guptamv at gmail dot com

Surrender K Singal 22 September 2017
Pls. Read Influence as Industrial

Surrender K Singal 22 September 2017

Are Micro Influence Establishments covered under Inflation Dispute Act 1947

Show more

View All Comments :: 4

Related Articles

- Wife's Capability to Earn: Is No Reason to Reduce Maintenance Awarded to Her
- No bar on claiming past dues from employer if employee has availed VRS
- Industry/Allottee has no right to be impleaded as a party in the compensation matter
- Cease & desist notice from the People's Court - The Highest Court of India
- Brother has no claim over assets of married sister that she inherited from her husband
- Maternity benefit period and creche's provision
- No Income Tax on Notice Pay of Employee
- Why Lawyers Charge the Way They Do!
- Now Delhi High Court allows service of notice of suit through WhatsApp
- No use of trademark, no remedy

More »

Other Latest Articles

- Times when SC stole the show in 2019
- Everything About Indian Citizenship and Related Laws (CAB+) - Explained!
- SC line on condoning delay
- What is a Lease Deed?
- Supreme Court on Parameters of Anticipatory Bail
- Quashing False 406/498A Indian Penal Code
- A Short Note on Anticipatory Bail - Basics Explained!
- False Complaint by Wife U/s 498A/406 - How/When can It be Quashed?
- Personal Data Protection Bill - Is my data secured, or more vulnerable?
- All You Need To Know About Appeals Against the Commissioner of Income Tax

More »

MENU

Jobs
Coaching
Events
Bare Acts

Bookmarks
Legal Dictionary
Files
Judiciary

Notifications
Poll
Video
Top Members

Forms
Scorecard
Today's
Birthdays

RSS
Rewards
Lawyers Search

About
We are Hiring
Advertise
Terms of Use

Disclaimer
Privacy Policy
Contact Us

Our Network Sites

CAclubindia® India's largest network for finance professionals

Download on Google play

Send Me Newsletter

Email address...