

Mr 'Always on Leave', you are fired

Habitual Absence From Workplace Without Sanctioned Leave For Long Period Amounts To Misconduct: HC

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EMPLOYEES, who are habitually absent from work for long periods without getting their leave sanctioned, stand the risk of losing their jobs. Passing a judgement in a recent case, the Bombay High Court reiterated that habitual absence from the workplace without sanctioned leave for a very long period amounts to "misconduct" on part of the employee, making him/her liable for dismissal from service.

The HC gave its decision in the case of Pandurang Vithal Kevne (petitioner) versus Bharat Sanchar Nigam Limited (BSNL) and Union of India. The petitioner, who worked as an examiner with the telecom company, was fired by BSNL for misconduct on account of taking leave without sanction. He appealed against the order of termination of services to the Central Government Industrial Tribunal, Mumbai. The tribunal in December 2006 held that the charge of misconduct was valid and that under

the circumstances the termination of service was proper punishment.

Mr Kevne contested the tribunal's award before the HC. However, the HC upheld the decision of the tribunal and said that the petitioner was guilty of misconduct alleged against him and was hence liable to be dismissed from the services of his employer, BSNL.

Further reliance was placed upon the Supreme Court's decision in the case of Delhi Transport Corporation vs Sardar Singh, 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.

"In a world of competition where performance and productivity are of essence, this judgement (HC) seems to be a step in the right direction," said senior lawyer Nishith Desai. "It is however pertinent not to make a sweeping generalisation as an employee may need to take leave without prior



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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 disproportionate."

The petitioner was alleged to have

been guilty of misconduct by remaining absent for a total period of 355 days, 285 days and 245 day in the years 1995, 1996 and 1997, respectively, without prior permission or intimation to his employer. The absence from duty during

these periods was validly explained by the petitioner and BSNL also regularised these leave days by sanctioning different types of leave—earned, half-pay, casual, annual and unpaid.

However, regarding the grant of leave, BSNL emphasised that the absence of the employee required regularisation in some way for the purpose of maintaining a correct and adequate record of the duration of service.

The company argued that though it had subsequently regularised the employee's absence by granting him leave with or without pay, it would not be sufficient to conclude that the leave days availed of by him were authorised. BSNL also admitted that it had penalised the petitioner by reducing his pay to a lower stage for one year without cumulative effect. However, the petitioner showed no signs of improvement in his attendance despite this penalty.