

## HR Law Hotline

June 08, 2006

### REMAINING ABSENT? YOU COULD LOSE YOUR JOB: SUPREME COURT

In a recent important ruling, the Supreme Court of India ("SC") has decided that remaining absent for a long time cannot be said to be a minor misconduct. The apex court upheld the dismissal of an employee of North Eastern Karnataka R.T. Corporation (a statutory organization which operates as a transport company running a fleet of buses), on account of prolonged absenteeism.

The employee, who worked as a conductor with the company, remained absent without authorization from November 27, 1990 to December 2, 1993, a period of three years and five days. Upon examination of his leave records, it was found that he had previously been repeatedly absent without authorization. Following a departmental enquiry, the employee was found guilty of misconduct, leading the enquiry commission to order his dismissal from service.

The employee raised an industrial dispute against the order of dismissal.

The Labour Court of Karnataka observed that at an earlier hearing before it to determine a preliminary issue, the departmental enquiry had been set aside and the employee had been granted interim relief. While directing the company to reinstate the employee, the Labour Court also held that he was entitled to a major percentage of his back wages from the date of grant of the interim relief till the date of his reinstatement.

Aggrieved by the decision of the Labour Court, the company filed a writ petition in the High Court. The High Court dismissed the writ petition.

On appeal, the SC, relying on a slew of cases, took a sterner view. It observed that remaining absent for a long time could not be said to be a minor misconduct. The SC also observed that as the company was a statutory organization providing a public utility service, the service of the conductor was "imperative".

Acknowledging that the punishment of removal of the employee was "absolutely correct and not disproportionate as alleged by the Respondent", the SC set aside the impugned judgment and order of the High Court and allowed the appeal by the company.

With this ruling, the SC has once again established, that it will not maintain a pro-labour stance at the cost of discipline at the workplace. In a world of competition where performance is of essence, this judgment seems to be a step in the right direction.

- Rina Kamath & Vikram Shroff

Source: *Ruling of the Supreme Court of India in Civil Appeal No. 2637 of 2006*

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