

## 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*<sup>1</sup>.

### 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 3<sup>2</sup> 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*<sup>3</sup> 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 employee<sup>4</sup>. 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 India<sup>5</sup> 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 disproportionate<sup>6</sup>.

- Harshita Srivastava & Vikram Shroff

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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.

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