

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 1066 OF 2004 /

BETWEEN

Gopikrishna Upadhyay S/o Gangaram, aged about 54 years,  
Occupation Ex. Parichalak (Conductor), M.P.S.R.T.C. Ambikapur,  
District Sarguja, Tehsil and District Sarguja, resident of  
Village & Post Saída, P.S. Chakrabhata, Tehsil and District  
Bilaspur (CG).

PETITIONER

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The State of Chhattisgarh, through the Secretary  
Department of Adhosharachna, Vikas Nigam, Mantralay,  
D.K.S. Building Raipur (CG).

2. M.P.S.R.T.C., through Divisional Manager, Depot Durg  
Now Chhattisgarh Adhosharachna Vikas Nigam, through  
Divisional Manager (Transport Section) C.I.D.C. Raipur .
3. The Depot Manager,  
M.P.S.R.T.C. Durg / Adhosharachna Vikas Nigam, Durg.
4. The Depot Manager,  
Chhattisgarh Adhosharachna Vikas Nigam (Parivahan Prabhag)  
Unit Bilaspur (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA  
FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS OR  
DIRECTIONS/ORDERS

(101)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

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**S.B.: Hon'ble Mr. Justice N.K. Agarwal**

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**W.P. No.1066 of 2004**

**PETITIONER**

Gopikrishna Upadhyay

***Versus***

**RESPONDENTS**

The State of Chhattisgarh and  
others

**WRIT PETITION UNDER ARTICLE 226/ 227 OF THE  
CONSTITUTION OF INDIA**

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**Appearance :**

Mr. Vinod Deshmukh, Counsel for the petitioner.  
Mr. Pradeep Saxena, Counsel for the respondents.

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**ORAL ORDER**  
**(31.10.2013)**

Heard.

(2) The instant petition filed under Article 226 and 227 of the Constitution of India assails the legality and propriety of the order dated 01.03.2004 passed by the Industrial Court, Raipur in Appeal No.257/MPIR/91, whereby and where-under, the petitioner's dismissal order has been upheld by the Industrial Court reversing the order passed by the Labour Court, Durg (Annexure P/2).

(3) The brief facts of the case are that : the petitioner was working as a Conductor. He remained unauthorisedly absent from his duties for the period commencing from 03.07.1984 up to 14.02.1986. Looking to the long

absence, after serving notice upon the petitioner, Departmental Enquiry was initiated against him. After conducting the enquiry, the petitioner was dismissed from service. The petitioner challenged the order of dismissal before the Labour Court. The Labour Court vide order dated 03.04.1991 set-aside the order of dismissal and directed for petitioner's reinstatement with 50% back wages, which was assailed by the respondent-employer and vide impugned order, the Industrial Court has set-aside the order of reinstatement, restoring the order of dismissal passed by the respondents. Hence, this petition.

(4) Mr. Vinod Deshmukh, learned counsel appearing on behalf of the petitioner, would submit that the petitioner was absent due to his long illness. Though no permission was taken by him from the Department before proceeding on leave, but he applied for the same and also applied for its extension from time to time by sending letters to the Department through Under Posting Certificate. Despite above, the petitioner was dismissed from service and the Labour Court, considering the evidence and material brought on record, has rightly set-aside the order of dismissal, but the Industrial Court without appreciating the evidence on record in its proper perspective, has set-aside the order of Labour Court and restored the order of dismissal, which is bad in law.

(5) On the other hand, Mr. Pradeep Saxena, learned counsel appearing on behalf of the respondents, supported the order impugned and contended that absence from duty without proper intimation is a grave offence warranting removal from service. The petitioner did not inform the respondents about his absence for a long period of about 2 years i.e. 591 days nor had filed any medical certificate during the above period. It is only after passing of the dismissal order, he has filed a medical certificate before the Labour Court, which was not issued by any Medical Board nor by reading of that, it can be said that he was admitted in any hospital for a long period of about 2 years for his alleged illness. Therefore, the respondents, after considering every aspect of the matter, has passed the order removing the petitioner from service. However, the Labour Court, without appreciating the facts and material properly, erroneously has set-aside the order of dismissal and therefore, the Industrial Court has rightly set-aside the order of the Labour court and restored the order of dismissal.

(6) I have heard learned counsel for the parties and perused the paper book.

(7) Indisputably, the petitioner absented himself from service for a long period of about 2 years i.e. 591 days.

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Despite service of several notices, neither he appeared nor filed any reply and/or any medical certificate. It is only at the time of filing of the petition before the Labour Court, he has stated that he has sent the applications for extension of leave by Under Posting Certificate and also produced one medical certificate without examining the Doctor in this regard. However, the Doctor has not stated anything in his certificate that for the entire period mentioned above the petitioner was admitted in the hospital. Along with the certificate, the petitioner also did not file the prescriptions and treatment given to him or any Bed head ticket. In the absence whereof, in my opinion, the respondents have not committed any illegality in ignoring the above certificate and passing the dismissal order and the Labour Court, therefore, has certainly erroneously passed the order in petitioner's favour.

(8) It is settled legal position that absence from duty without proper intimation is a grave offence warranting removal from service [please see ***Mithilesh Singh v. Union of India and Ors. (2003) 3 SCC 309***]: In the instant case, the absence is of about 2 years i.e. 591 days. It is highly improbable that a person who is not mentally unsound can remain absent for such a long period without getting the leave sanctioned. Therefore, on the face, the petitioner's absence for such a long time was deliberate.

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The employee was required to obtain prior sanction before proceeding for leave and only exception is that in appropriate cases for reasons to be recorded in writing the appropriate authority may accord *ex post facto* sanction for leave already availed of. Instant case is not such a case, in which, due to emergency the petitioner proceeded on leave for some treatment without getting prior sanction and he may be entitled for *ex post facto* sanction.

(9) It is settled legal position that if the charges are established against the delinquent and there is no lacuna in the procedure adopted, normally, the Court in exercise of power under Articles 226/227 of Constitution of India does not interfere with the quantum of punishment.

(10) Considering every aspect of the matter, I do not find any infirmity in the order of removal of the petitioner warranting interference of this Court and the petition, being devoid of merit, is liable to be and is hereby dismissed.

(11) No order as to costs.

Sd/-  
N. K. Agarwal  
Judge

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