## PUNISHMENT OF TAKING LEAVE ON FALSE GROUNDS

Taking leave on false grounds is a misconduct for which the services of a workman can be terminated. It is not necessary that this should be expressly mentioned to be a misconduct in the Standing Orders or the Service Rules. It is held by the Madras High Court that even if there is nothing in the regulations to constitute false grounds in leave applications as a misconduct, it is still permissible to terminate the services on such a charge. Even if it may not be in the regulations but regulations are not exhaustive. Though it is mentioned in the Buckingham and Carnatic Mills vs. Venkatishah, that Standing Order are binding but it does not mean that what is not embodied in the Standing Orders can never be considered as misconduct from that stand point. If an employee commits murder or other cognizable offence not described in the Standing Orders, it can not be said that he is not guilty of misconduct Bank of Madura Ltd. vs. Bank of Madura Employees Union. Similarly, when leave was taken by a workmen on account sickness but later on he complained that he met with an accident in the factory and it was found that the injuries were sustained elsewhere and he wanted to dishonestly foist the liability of the claim for compensation on the management, his dismissal in the circumstances was justified. Vijay Mills Co. Ltd. vs.Their workmen. However, when a workman took leave on some other grounds and went on hunger strike, then the hunger strike itself is neither wrong nor punishable in law. When the management was aware of the real state of things that the wrong mentioning of the reasons in his application for leave could not have the effect of deception. When the management not only granted him leave but extended it from time to time knowing fully well that the plea was not genuine, then the management cannot turn back and say that the worker was guilty of going on leave on wrong grounds. East Madhuban Coal Co. Tisra vs. Their workmen.

It is, however held by the Labour Appellate Tribunal that under the -general law, in the absence of standing orders the master has no right to dismiss his employees for short absence not even a day even through the reasons described for the absence was found to be false. It is neither a gross breach of discipline or gross negligence of duty. Bawa Crockery House Ltd vs. Bhoumick. In the case of Bank of Madura Employee Union vs. Bank of Madura Ltd. similar observation has been made and it was held that there is nothing in the Staff Regulations to constitute false ground in leave application into an act of misconduct. In the absence of any such regulations it will not be permissible for the management to terminate the services of an employee to that ground. The remedy is to amend the regulations or to refuse leave to employees who resort to false grounds.

This view is not generally followed. In one case the Tribunal held that the workman remained absent on the plea of his father being ill. This he did willfully and deliberately. It will be impossible for any office to run smoothly and efficiently if the employees take it into their head that they can absent themselves with impunity, without being granted the necessary permission or leave. After this, tribunal passed an order of reinstatement on the plea that his past record was good relying on Burn & Co. Ltd. vs. Their workmen. This was reversed and it was held by the Punjab High Court that no workman can claim as a matter of right, leave of absence through that might be without permission and without any application. The dismissal was justified as the Tribunal has no jurisdiction in view of item 3 of the second schedule to order reinstatement compassionate grounds Roopnarain Ramchander (Pvt.) Ltd. vs. Industrial Tribunal Delhi. In one case the workman absented himself and worked on new construction outside the factory and when he was detected he got a leave application sent from Bangalore through he never went to Bangalore. Thus he look leave on false pretexts and was rightly dismissed. Gordern Woodroffe Leather Mfg. Co. vs. Their workers Union. If the employee is found working while on sick leave, this will be misconduct. Bharat Fute Refind (P) Ltd. vs. Their workmen.

**Over-stay of Leave**

Over-stay of leave is also a kind of absence. The only difference between a simple absence and over-stay of leave is that in one case the worker absents without leave from the very beginning and in another case he remains on sanctioned leave for a certain period and then he absents again. The principles and considerations which generally apply to the case of absence are also applicable to the case of over-stay of leave, with certain modifications. When a worker goes on leave in the very beginning he is required to take advance permission of the management and then avail of the leave. But if a worker is already on leave then on a number of occasions he goes outside the place where he had been working and in such cases if he wants extension of his leave, he sends him application from out-station. In such cases the liability on the workman is that his application should be received by the management well in advance of the expiry of the period of leave so that the management may be able to take decision whether the extension should be granted or not and also be in a position to communicate to the workman before his leave expires so that he may be able to join his duties in time.

There is also a corresponding liability on the management to dispose of all such applications of extension of leave expeditiously. It is just possible that on account of late receipt of the information the worker may be late by a few days. The over-stay of leave, therefore, does not involve the same degree of culpability. (Rashtriya Mill Mazdoor Sangh vs. New Kesar-i-Hind Mills). If it is for a considerable period it will necessarily be a misconduct. If it is not for a considerable period it will still be a misconduct if it is repeated too often. (1951-II L.L.J. 626)

**Quantum of punishment for over-stay**

In case of over stay the worker has to explain why he did not apply and secondly whether the reasons for absence were compelling, If the workman has failed to apply for leave, that is irregular compelling. However, when there are compelling reasons for his absence, the, failure to apply is technically a misconduct involving breach of the rules of service, but it may not deserve a serious punishment of dismissal. When a bank employee of over six years service has overstayed the leave for two months on the ground that he had to attend his sick wife staying in a village then the explanation is plausible because there is no conceivable reason why the Head Clerk with six years' will go and stay in a village leaving the service at the risk of losing his job. The failure to apply is, however, a breach of the rules. The termination of service without notice is a very severe punishment. Through it is for the management to decide upon the form of punishment, but it is not the case of fraud or embezzlement or even inefficient discharge of duties but merely a case of over-stay of leave. (Hindus tan Commercial Bank Ltd. vs. Mr. Dikshit). All India Industrial Tribunal (Bank Disputes)

**Actions which can be taken in case of prolonged absence**

When a worker remains absent for a very long time,. there are various alternative actions open to management. The management may either give him a charge-sheet for absence without leave and after enquiry the management may take such action as may be deemed fit and proper.

On the other hand, the management may terminate the services of the worker by an order of discharge simply or after waiting for considerable period. The management may also draw an inference from prolonged absence that the worker is no longer interested in service and has, therefore, abandoned the job voluntarily and may strike off his name. The pertinent question will be what action out of the three, mentioned above, should be taken in a particular case and, therefore, we are discussing below the circumstances in which the above actions may be taken.

Sanding Orders of industrial establishment usually provide habitual absence without leave or absence without leave for more than prescribed period as constituting an act of misconduct. It is very essence of the contract of employment that the employee must perform his job diligently and care fully and must not absent himself without prior sanction of leave in writing, and if compelling circumstances, such as sudden illness prevents him from ding the same to apply for leave from the date he was absent giving the reason why he could not obtain prior sanction, and have his absence giving the reason why he could not obtain prior sanction, and have his absence from duty reason why he could not obtain prior sanction, and have his absence from duty regularised by ex-post sanction of leave. Halsbury observes (Laws of England, 3rd Edn. Vol. 25, page 464, and the authorities cited therein.) "A servant is under an obligation not to absent them self without good cause, his master is entitled to recover damages against him for breach of contract, and the absence of servant may, if it amounts to misconduct inconsistent with the due and faithful discharge by the servant of his duties, constitute good cause for his dismissal.

Standing Orders of some industrial establishments provide for automatic termination of service if an employee is absent without leave for more than a specified number of days at a time. Strictly speaking this is not a case of any misconduct on the pan of the employee, but is taken as a proof of the fact that he no longer wants to continue in employment, or what is called, there is abandonment of service by the employee of his own accord. Even when on the very facts of the case it is clear beyond doubt that the employee was absent without leave for a considerably long period and there could be a no possible explanation for his absence or any defence, his services can be terminated even without any formal charge for enquiry. This is clear from Burn and Co. Ltd. v. Their Employees, in which one of the questions or decision before the Supreme Court was whether reinstatement of one A by the Labour Appellate Tribunal was justified.

A, an employee of the company, was arrested by the Government under West Bengal Security Act and detained in jail from 25 January 1949 to 5 April 1951. The company terminated his services on 22 April 1949. The tribunal made an order that he should be reemployed. On appeal, the labour Appellate Tribunal accepted A's claim to reinstatement on the ground that he had been discharged without the company, framing a charge or holding the enquiry, and that the rules of natural justice had been violated. Not agreeing with the decision, the Supreme Court held "The ground of discharge is the continued absence of the employee, and his inability to do work and it is difficult to see what purpose would be served by a formal charge being delivered to him and what conceivable answer he could give there to. The order of the Appellate Tribunal is manifestly erroneous and must be set aside."

In Indian Iron and Steel Company Ltd. vs. Their workmen, the standing orders of a company inter alia provided for discharge of workmen taken in police custody in connection with -Criminal prosecution against them. Leave applied for by such workman was refused by the company, and their services were terminated. The Labour Appellate Tribunal accepted the contention on behalf of the workmen that the industrial tribunal had in each case considered the justification for absence without leave, and in view of the circumstance that the men were in custody, the company was not justified in refusing leave. Applying Burn and Company vs. Their Employees cited above, the Supreme Court set aside the decision of the Labour Appellate Tribunal and held: It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them: but it would be unjust to hold that in such circumstances the company must always give leave when an "'.application for leave is made. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer.

In Express Newspapers (P) Ltd. V. Industrial Tribunal', an employee on enquiry was found guilty in having availed himself of four days' leave without getting his leave sanctioned and by simply sending a letter for leave when he was specifically asked to do the night duty on false reasons and the Management dismissed him on that account and also filed an application under section 33 (1) of the Industrial Disputes Act before the Industrial Tribunal Madras for approval of the action taken. The Industrial Tribunal refused to accord approval of the action taken by the management and allowed the writ petition against this decision of the Industrial Tribunal, observing: "The object and purpose of see. 33 of the Act is to prevent victimisation of any employee by the management or the prevention of any unfair labour practice during the pendency of other proceedings so as to keep the atmosphere calm and tranquil and the relationship between the parties equable and cordial. Prevention of victimisation of the employee by the employer and prevention of unfair labour practice or methods is the limit of the jurisdiction of the Industrial Tribunal in exercising its powers under section 33(2) of the Act. The management should not be deprived of its right to administer its internal affairs and domestic management so long as they do not come into conflict with the statute. The employee can not disown its duties inherent in the service and proclaim only his rights to the point of turning a beneficent legislation in his favour as an engine of oppression against the employer. It is clear that the charge leveled by the management against the second respondent was one which came under clause (i) of the Standing Orders, namely, "willful insubordination or disobedience whether alone or in combination with others of any lawful and reasonable order of a superior."

In Mahalakshmi Textile Mills v. Labour Court Madurai, the standing orders of an establishment inter alia constituted absence without leave for eight consecutive days, a misconduct. It further provided that in awarding punishment to a workman found guilty of misconduct at a domestic enquiry the management shall take into account the gravity of misconduct, the previous record, if any, of the workman was found guilty of remaining absent without leave or more than eight consecutive days at the domestic enquiry and was dismissed.

The Labour Court set aside the order of dismissal and the High Court upheld the order of the labour court observing: It is well-settled that the labour court has no jurisdiction to canvass the severity or otherwise of the punishment awarded by the management, unless touches a question of victimisation or bona-fides. However, as in this case, the award of the labour court in substance and effect amounted to a conclusion of finding that the relevant matters had not been taken into consideration by the management in awarding punishment. The order of dismissal could not be sustained in the writ petition. The matter of misconduct alleged against the concerned workman was however released and the management could again deal with it afresh according to the rules.

In Muir Mills Co. Ltd. v. Harbans Singh'!, the standing orders of the employer provided, inter alia, for dismissal of a workman, 20(f) for remaining absent without leave from post or beat during duty hours and 20(y) for any breach of standing order and any other act of misconduct. The employee concerned who was an assistant Jamadar in the watch and Ward Department was charge sheet on two counts, namely, (i) absenting himself from the 24th September 1953 without leave, and (ii) being prosecuted by the Police for serious offences under the Arms and Excise Acts for being in possession of unlicensed country revolver and one seer of contraband opium). On inquiry he was found guilty of misconduct under the two clauses of the standing orders referred to above. and granting permission for termination of his services, the Labour Appellate Tribunal observed: "We are of opinion that at least under clause (f) of Standing Order 20, a prima facie case has been made out for the termination of the services of Harbans Singh arid we see no valid ground for interfering with the discretion of the management in terminating his services.

We record no finding whether or not misconduct as contemplated in clause (y) of Standing Order 20 has been made out, because the criminal cases against Harbans Singh are still subjudice."

In Mcleod & Co. Ltd. v. Amar Mukherjee, there was no provision in the standing orders of a company making "absence without leave" for a short period of time a misconduct calling for dismissal. The workman remained absent without leave for three days and offered no explanation. It was held that it was not a case where extreme penalty of dismissal was justified and permission should not therefore be given for the same.

In Bank of Madura Ltd. vs. Bank of Madura Employees Union the Madras High Court held: "Where there are standing orders, they would of course, constitute the terms and conditions of service and to that extent, they will be binding on the parties there to as a contract. But, it does not follow that what is not embodied in the standing orders can never be a misconduct. The standing orders cannot be considered to be exhaustive from that stand point. If, for instance, an employee commits murder or other cognizable offence, which is not described in the standing orders which govern the services as a misconduct, surely it cannot be said that, on that account, he is not guilty of a misconduct making him liable to disciplinary action entailing termination of service. Therefore, an employee who is charged with obtaining leave on fake pretences can not contend that it is not a misconduct according to the standing orders.

In Tata Iron Steel Company vs. Lattu Turi, one of the workmen was dismissed on a charge that he was a habitual absentee and that by his absence without leave or permission on three days in September 1963 he was guilty of misconduct punishable under standing order 19(4) of the company. The tribunal held that mere absence on three occasions in September 1963 will not suffice in law to prove habitual absenteeism and the reference to absence in previous year without being mentioned in the charge was improper, and refused approval of action sought under section 33(b) of the Industrial Disputes Act, 1947. The High Court refused to interfere with the order in writ petition, holding.

The finding of the tribunal that there was sufficient cause for the workman's absence on the three specified dates and hence the charge of misconduct under clause 19(4) of the standing orders was not established, was finding of fact which could not be interfered with by the High Court in exercise of its jurisdiction. So also the question whether on the admitted facts there was any contravention of clause 19(4) of the standing order was a pure question of law (as opposed to question of fact decided by the employer) and that finding was clearly unassailable in a writ petition.

In an interesting English case reported as Hanley vs. Pease and Partners Ltd., a workman absented himself from his work for one day without leave from his employers. The employers did not dismiss him but suspended him from working on the following day, whereas the workman was prevented from earning the wages he would have earned on that day had he been allowed to work, namely 6s 2d. It was held that although the employers might have had a right to damages against the workman they had no right to suspend him from working for the one day, in a much as by so doing they were taking upon themselves, after declining to dismiss the workman and electing to treat the contract as a continuing one, to assess their own damages for the workmen's default at the sum, of which would be represented by one day's wages. The workmen was therefore entitled to be awarded under the denomination of wages or damages the sum 6s 2d. In Beattie vs. Parmenter, Lord Esher M.R. observed: There had been constant irregularities in the attendance of the plaintiff. The going to Sear borough or Brighton on account of illness was a sham, the illness was a sham, and it was assumed in order to avoid work As regards the irregularities in attendance, defendant, could not rely upon them, in as much as, after full knowledge of them, he continued the plaintiff in his service. But the other acts afforded a justification for the dismissal. In Filleul vs. Armstrong a teacher was dismissed for absenting himself for two days. In an action for salary, the defendant pleaded that the plaintiff wrongfully absented himself for two days which was an unreasonable time. It was held that there was not sufficient reason for dismissal as it showed neither moral misconduct nor any injury accruing to the defendant from the absence of the plaintiff.

**Overstaying sanctioned leave**

Overstaying sanctioned leave without permission stand on much the same footing as absenting without proper sanction of leave. The usual plea put forth by employees in such cases is that an application for extension of leave was duly submitted to the management in time but as no reply was received, it was presumed that the leave applied for had been sanctioned. In Raghunath Enamels Ltd. Kanpur vs. Sri Surendra Singh it was held. Where a workman on leave applies for extension of that leave and does not receive any reply to his application from the employers, he is not bound to presume that the leave had been refused. The presumption is rather to the contrary that it has been granted. When an operative presents himself for duty after leave, it is the duty of the employer to ask for an explanation if he thinks that there has been an overstay of leave. There is no duty to offer explanation unless asked for (This was followed in Phoenix Mills Ltd vs. Rashtriya Mill Mazdoor Sangh. When application for extension of leave for fifteen days was asked for and there was no J proof that the letter from the employer refusing extension was received by the employee, it was improper for the employer to refuse him work when the employee reported for duty on expiry (or before) of the extension period· asked for. Mere proof of a letter having been sent under certificate of posting is no proof of the letter having been received by the addresses).

(But in Rashtriya Mill Mazddor Sangh vs. New Prahlad Mills, Bombay, a workman on the expiry of his sanctioned leave for extension of leave on certain grounds. No reply was sent by the management to the request for extension. The workman overstayed the sanctioned leave. His explanation for extension of leave was not found proved by the manager. It was held: In these circumstances, the workman could not presume that the extension was granted. Such presumption could arise only in case where the reason put forward by the workman for extension was true and probable and not to cases where the workman has failed to prove the reason for extension of leave. As per the relevant standing order of the company the workman must be held to have lost his appointment and the action of the management in striking off his name from the muster roll and offering him a badli card must be held justified.

In Mafatlal Narandas Barot V. Divisional Controller, State Transport, the Supreme Court has held: Where the conditions of service provide, that irregular attendance, absence without leave and without reasonable cause and failure without sufficient cause to report, when directed, for duty, amount to acts of misconduct and it is also provided that the employer must give the accused workman a reasonable opportunity to show cause before taking action against him, such accused workman is entitled to a reasonable opportunity to show cause against the action proposed to be taken against him, and a termination of his service without such opportunity being given to him would contravene both the conditions of service as well as principles of natural justice.

**Presumption of Abandonment of Service in case of Imprisonment or Detention**

When a worker is under detention or imprisonment then he is absent on account of the circumstances beyond his control and there can be no presumption that he has abandoned his job though the employer retains the right of terminating his services or to dismiss him in appropriate cases. When the employer remains silent then the services of the workman will continue though he will be treated as 'absent'. However, if after acquittal the worker does not report for duty within a reasonable time then such a presumption may be drawn. When after acquittal an operative approached the mills after 9 months it was! held that the management was not bound to keel the vacancy for indefinite period and as the appellant had kept quiet for a long time, it denotes voluntary abandonment of service. Mere absence of a formal order under Standing Order did not give rise to any equity in favour of the worker so as to entitle him to the remedy of reinstatement or compensation.

**Swadeshi Mills Co. Ltd., Kurla V Their Workman Ramoo Rangoo.**

In one case two conductors were arrested by the police and as soon as they were bailed out they were detained under the Preventive Detention Act. After nearly six months they were created as having abandoned the service in accordance with Standing Orders which required that a workman absenting without permission or intimation for more than a month will be deemed to have abandoned the service. It is admitted that the workmen remain absent for nearly one year without leave. The mere fact that a letter of employees was proved to ha' been delivered to the employers it does not show that the employers had given permission. Giving intimation that they were in jail and should be marked present does not amount to taking permission. It is against every principle of justice, equity and good conscience to require an employer to mark present or give long leave to an employee who has been detained for a year in the interests of the security of India. BEST Undertaking V Fainuddin and others.

Management cannot Refuse Leave to a Workman due to circumstances beyond his control where the workman who was detained under the Defence of India Rules as a Left Communist, applied for six months' leave without pay from 20-10-1965 to 20-4-1966 within which time he expected to be released but the Management granted him only 30 days' leave even though under Standing Orders it had the power to grant leave without pay for more than one month and the workman on release reported for duty on 18-4-1966 but he was not permitted to resume duty on the ground that due to his continued absence after the expiry of 30 days leave his services were automatically terminated, it was held that since the absence of the workman was for reasons beyond his control and unconnected with any controversy between the Labour and the Management, the refusal by the management to gram leave without pay to the extent necessary when it had power to grant such leave under the Standing Orders was unreasonable and malafide amounting to unfair labour practice and victimisation of the workman and justifying setting aside the order of termination of the workman.

**Delhi Cloth & General Mills Ltd. Vs. Piara Lal and another**

**Leave for clerical Staff & the operatives**

For historical and other reasons the clerical staff referred to sometimes as white collared workmen. In a number of industries the clerical employees have more leave privileges than the operative staff. In the Cotton Textile Industry the distinction in the matter of leave between the clerical staff and the operative staff had existed for many years and it could not be said that the operative staff is therefore discriminated.

It has also to be borne in mind, that to give the same leave privileges to the operative staff as to the small proportion of clerical staff would create a very great burden and would amount to an enormous increase in the cost of production.

Taking the state of the industry over a course of years, its stability and its general prosperity over a long period and not merely. the profit position of the latest one year, into consideration, the court should find whether the industry would be in a position to bear a reasonable burden by an improvement of leave facilities of the operative staff. On these considerations the court allowed to permanent operatives, with 5 years continuous service 7 days leave with wages in addition to that laid down under the Factories Act, but subject to all other provisions of the said Act, with accumulation up to 42 days. It also allowed 5 days paid causal leave in a year to all permanent operatives to provide for emergencies like marriage in the family, bereavement, short period of illness, etc.

**R.M.M.S. Vs. Mill owners Asson, M.M.S. Vs. R.R. Textiles, 3 Ganon Dunkerley & Co. Ltd. Vs. Their Workers**

**Leave in case of Dismissal or Discharge and Unavailed leave in case of Termination of Employment:**

In case of dismissal or discharge from service during the course of the first year of his service, a worker is to be allowed leave with wages at the rate of one day for every 20 days of work, even if he has not qualified for the leave by putting forth the requisite number of days of work.

In case of termination of employment of a worker before he has taken the entire leave or if the leave was applied for and not granted, and the worker quits his employment before he has taken the leave, he is to be paid the amount of leave wages due m respect of the leave not taken. Such payment should be made before the expiry of the second working day after such termination when the termination is by the occupier and, where a worker leaves his employment, it should be on or before next pay day.

The unavailed leave of a worker should not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

The leave wages should be computed at the rate of the daily average pay of a worker total full time earnings for the days on which he worked during the month immediately preceding his leave. In computing the daily average, dearness allowance and the cash equivalent of the benefits through concessional sale to the workers of food grains and other articles the manner of computing which has been laid down in the Factories Rules, should be included, but overtime and bonus should not be included.

**Payment in advance of Leave Wages:-**

A worker who has been allowed leave for not less than 4 days should be paid wages for the period of leave allowed before his leave begins.

Whether holidays to be included or excluded in counting the days of leave. There are differences on this point in the various States. What is a common and certain principle which is true of the Factories Act and all Establishment Acts. In all cases, if the leave begins or terminates on a holiday or close day, such days are excluded from the calculation of the leave. With regard to intervening holidays and close days, however, there are differences. The Factories Act includes such holidays for factory workers as do Bombay and Madhya Pradesh for establishment employees. On the other hand, Bihar, U.P Kerala and Orissa exclude such intervening holidays from the calculation of leave.

The sick leave is an exception to the general rule that application for leave should be received in advance. Illness is often unanticipated and it is at times impossible or even very difficult to apply for sick leave in advance by its nature. The rule that leave should be taken in advance is therefore subject to some relaxation In case of sickness. Rabindra Nath Sen and others vs. 1$^{st}$ I.T. West Bengal, but it is necessary for the employee to inform the management at the earliest possible time during his sickness about his intention to avail leave. When the worker remained absent for a considerable time even after the expiry of leave sanctioned to him without permission of the management, then the termination will be justified even if the worker had been actually ill. In such cases the bonafides of the management in terminating his services cannot be questioned. **Victory Public Hill Motor Transport Co. Ltd. vs. Their Workmen**