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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th April, 2026.

\+ W.P.(C) 2439/2020

AVINASH KUMAR .....Petitioner

Through: Mr. Vikash Kumar, Advocate.

versus

UNION OF INDIA AND ANR. .....Respondents

Through: Mr. Jivesh Kr. Tiwari, CGSC with Ms. Nandini Aggarwal and Ms. Samiksha, Advocates for R-1/UOI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. This writ petition impugns order dated 30th August, 2019, whereby the Petitioner was transferred from the Corporate Office of Respondent No. 2/Energy Efficiency Services Limited,[1] Delhi/NCR to Agartala, Tripura, as well as the subsequent order dated 6th December, 2019, by which his name was struck off the rolls on the ground of unauthorised absence. A consequential release order dated 9th December, 2019 records that his services stood terminated with effect from 6th December 2019.

CM APPL. 53348/2025

2. This application seeks amendment of the captioned writ petition. The proposed amendment is essentially formal in nature. While the Petitioner

had originally challenged the transfer order dated 30th August, 2019, the amended petition also impugns the subsequent order dated 6th December, 2019 terminating his services, along with the consequential release order. The foundational facts remain unchanged.

3. Respondent No. 2 has already filed its counter affidavit addressing the challenge as set out in the amended writ petition and has had full opportunity to meet the case. No prejudice would therefore be caused by permitting the amendment.

4. Accordingly, the application is allowed. The amended writ petition is taken on record.

W.P.(C) 2439/2020

Factual Background

5. The Petitioner, a Chartered Accountant and Cost and Management Accountant, was appointed as Manager (Finance) (Regular) by Respondent No. 2. The offer of appointment dated 29th July, 2016 stipulated his initial posting at the Corporate Office, Noida. The Petitioner accepted the offer on 3rd August, 2016 and joined service on 27th September, 2016. By office order dated 5th October, 2016, he was posted at Kolkata and was directed to report to Mr. S. Gopal, CGM (Finance).

6. The Petitioner asserts that, while posted at Kolkata, he reported financial irregularities and discrepancies in stock movement within EESL by way of an email dated 5th April, 2017 titled "Highly Confidential," addressed to Mr. S. Gopal and Mr. Mohit Khatri. Shortly thereafter, by order dated 7th April, 2017, he was transferred to the Corporate Office at Noida, with a direction to continue handling his existing assignments, including

[1] "EESL"

payments for the Eastern Region, and to report to Mr. S. Gopal. The Petitioner joined the Corporate Office on 20th April, 2017.

7. On 7th June, 2017, the Petitioner, along with one Sudhanshu Tarway, was deputed for verification of stock and related activities in Jharkhand. A report dated 30th June, 2017 was submitted, noting discrepancies including faulty and missing bulbs, irregular institutional sales, mismatch in material inward and outward, and significant variance between dashboard and actual sales, with an assessed financial implication of ₹3,10,58,747.

8. According to the Petitioner, he continued to report irregularities in the commercial, stock and financial processes of EESL. On 14th June, 2018, he was transferred from the P&A Division to the Commercial Division, reporting to Mr. Prashant Kumar, General Manager. Thereafter, on 7th August, 2018, he was against transferred to the Commerical Wing and was assigned responsibilities relating to payment realisation from Tripura and Jammu & Kashmir, while remaining stationed at Noida.

9. The Petitioner further relies on his Tripura visit report dated 29th August 2018, submitted to the Managing Director, who directed follow-up on the timelines indicated and requested the COO to address the issues flagged. On 25th June, 2019, the Petitioner addressed a communication to the Chief Vigilance Officer of EESL alleging irregularities by senior finance officials and seeking initiation of a vigilance inquiry. Around the same time, he applied for the position of Head Cluster Finance (Eastern Region) pursuant to an invitation for expressions of interest issued by EESL.

10. By order dated 30th August, 2019, the Petitioner was transferred to Commercial Division, Tripura, with work location at Agartala, and was directed to be released on or before 2nd September, 2019. The order records

that it was issued *"in consideration of the organisational requirements"*.

11. On 2nd September, 2019, the Petitioner represented against the transfer. He stated that he had been appointed as Manager (Finance), had more than twelve years of post-qualification experience, and had applied for Eastern Regional Cluster, Finance, at Kolkata. He further stated that there was no finance requirement in Tripura and that his parents were suffering from serious ailments. He requested that the transfer order be recalled.

12. The Petitioner did not join at Agartala, and subsequently addressed multiple communications in October 2019 alleging that the transfer was retaliatory in nature on account of his disclosures regarding financial irregularities.

13. On 6th December, 2019, the Petitioner was informed *via* email that his services stood terminated. The communication enclosed the termination letter along with prior notices alleging unauthorised absence dated 1st October, 2019, 30th October, 2019 and 15th November, 2019, the transfer order and the termination letter.

14. The termination letter dated 6th December, 2019 records that the Petitioner had been unauthorisedly absent from duty with effect from 3rd September, 2019. It refers to the transfer order dated 30th August, 2019 and states that he had been advised to join at Agartala on or before 2nd September, 2019. The letter then invokes the service rule under which an employee who remains unauthorisedly absent for more than 90 consecutive days loses lien on his post and is deemed to have voluntarily abandoned service. On that basis, the Petitioner was informed that his name stood struck off from the rolls of the company with effect from 6th December, 2019.

15. On 9th December, 2019, EESL circulated a release order, stating that the Petitioner's services had been terminated with effect from 6th December, 2019 under the existing service rules and that his name had been struck off from the muster rolls of the company.

Petitioner's Case

16. Counsel for the Petitioner submits that the Petitioner was appointed to a regular post of Manager (Finance), Grade E-4, and therefore, the impugned action cannot be treated as a mere disengagement, but must withstand scrutiny in light of the applicable service rules and constitutional protections.

17. On maintainability, it is argued that EESL, being a joint venture of public sector undertakings under the Ministry of Power, is amenable to writ jurisdiction, and falls within the ambit of "State" under Article 12 of the Constitution. It is urged that the challenge is not to enforce a private contract, but to test the legality of termination of a regular employee by a public sector body, which must conform to Article 14 and the principles of natural justice.

18. It is further submitted that the objection on alternative remedy is misconceived. EESL's Reliance on Rule 32 of the Conduct, Discipline and Appeal Rules[2] is misplaced, as it contemplates an appeal against imposition of penalties under Rule 23 or an order of suspension. The Petitioner was neither suspended nor subjected to any disciplinary proceedings culminating in a penalty. In these circumstances, EESL cannot treat the case as one of "deemed abandonment" to bypass an inquiry, and simultaneously invoke a disciplinary appellate provision to defeat the present petition.

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[2] "CDA Rules"

19. On merits, it is submitted that the impugned order dated 6th December, 2019, though couched as a case of "deemed abandonment", is in substance, founded on allegations of wilful misconduct, including failure to comply with the transfer order and deliberate non-reporting. Once the employer itself attributes such conduct to the employee as evidenced by the counter-affidavit, the matter necessarily falls within the framework of misconduct under the CDA Rules, requiring issuance of a charge-sheet, framing of charges, disclosure of imputations, and a duly conducted inquiry. However, there is no material to show that any charge-sheet was issued, inquiry officer appointed, evidence led, or findings recorded regarding wilful disobedience or intention to abandon service.

20. The Petitioner further asserts that abandonment cannot be inferred merely from absence or failure to join at the transferred place, as it is essentially a matter of intention. The Petitioner's representations dated 2nd September, 2019 and subsequent communications in October, 2019 demonstrate continued engagement with the employer, negating any inference of voluntary severance of service. At best, the conduct alleged may have warranted disciplinary scrutiny, but could not be treated as abandonment.

21. It is further contended that Clause 24.9 of the Service Rules, which provides for "deemed abandonment", cannot be applied mechanically to dispense with fairness, particularly where termination entails serious civil consequences. The proviso to Clause 24.9, which permits the employee to subsequently account for the absence within 90 days from the termination order, cannot be treated as a substitute for a fair pre-decisional determination, especially when the conduct is characterized as wilful

disobedience.

22. In this context, counsel points to the background of the transfer order dated 30th August, 2019, submitting that the Petitioner had raised concerns regarding financial irregularities within the organisation, including reporting substantial losses and complaints to the CVO. The subsequent transfer to Tripura, despite his request for posting in Kolkata, coupled with his representations, indicates that the non-joining was accompanied by protest and explanation, and was thus not indicative of abandonment.

23. Counsel further submits that the release order and the communication dated 9th December, 2019 reveal the true nature of the action, which is in substance a termination and not a mere lapse of service by efflux of time. The Petitioner's name was struck off the rolls and the release was formally circulated within the organisation, thereby visiting him with serious civil consequences. It is contended that such action could not have been taken without adherence to the principles of natural justice.

24. The Petitioner places considerable reliance on the judgements of the Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala***[3] and ***Maharashtra State Road Transport Corporation v. Mahadeo Krishna Naik***,[4] to contend that he is entitled to reinstatement with full back wages.

Respondent No. 2's Case

25. Respondent No. 2 opposes the writ petition at the threshold, contending that the dispute arises out of a personal service contract and carries no public law element. Reliance is placed on judgements of the

[3] (2013) 10 SCC 324.
[4] 2025 INSC 218.

Supreme Court in ***St. Mary's Education Society v. Rajendra Prasad Bhargava***[5] and ***Army Welfare Education Society v. Sunil Kumar Sharma***,[6] to submit that writ jurisdiction cannot ordinarily be invoked for enforcing a contract of personal service.

26. It is further submitted that the Petitioner had an efficacious alternative remedy under Rule 32 of the CDA Rules, which provides for an appeal against imposition of penalties under Rule 23 or against an order of suspension, and that the writ petition ought not be entertained.

27. On the issue of transfer, Respondent No. 2 submits that transfer is an ordinary incidence of service. Reliance is placed on the offer of appointment dated 29th July, 2016 and the "Standard terms and conditions of appointment in EESL", accepted by the Petitioner, to assert that he was liable to be posted at any location, including offices, projects, subsidiaries, joint ventures or associated entities within India or abroad. It is further submitted that EESL, being a joint venture of public sector undertakings, follows a service framework consistent with such entities, which obliges the Petitioner to serve wherever posted without insisting on a particular station.

28. Respondent No. 2 asserts that the Petitioner's transfer to Tripura was effected in organisational interest to meet urgent operational requirements at Agartala, and denies any allegation of *mala fides* or retaliation linked to complaints raised by the Petitioner. The allegations that the transfer was linked to complaints made by the Petitioner regarding financial irregularities are baseless and unsupported by material.

29. It is further submitted that after the transfer order dated 30th August,

[5] 2022 SCC OnLine SC 1091.
[6] 2024 SCC OnLine SC 1683.

2019, the Petitioner was required to report at Agartala on or before 2nd September, 2019. Instead of doing so, he chose to remain absent. Letters dated 1st October, 2019, 30th October, 2019 and 15th November, 2019 were issued to the Petitioner, calling upon him to resume duties and giving him sufficient opportunity to comply with the transfer order. Despite these reminders, he failed to report at the transferred place of posting.

30. On termination, Respondent No. 2 relies upon Clause 24.9 of the Service Rules, which provides that an employee remaining unauthorisedly absent for 90 consecutive days shall automatically lose lien on the post and be deemed to have voluntarily abandoned service, subject to a limited opportunity to explain such absence within 90 days from the termination order. It is contended that the Petitioner was not removed by way of punishment following disciplinary proceedings, but his service came to an end by operation of Clause 24.9 due to continued unauthorised absence, and therefore, the case is one of deemed abandonment and not disciplinary removal.

31. Reliance is placed on the judgement of the Supreme Court in ***State of Punjab v. Dr. P.L. Singla***,[7] to submit that unauthorised absence is a serious service matter and that the employer is entitled to take action where an employee does not report for duty and offers no satisfactory explanation. It is contended that the Petitioner, having ignored repeated communications, cannot complain of violation of natural justice.

32. It is accordingly submitted that the Petitioner wilfully failed to comply with the transfer order, deliberately chose not to report at Agartala, and acted in disregard of lawful directions, thereby breaching his service

[7] (2008) 8 SCC 469.

obligations. The action taken is stated to be in accordance with the applicable rules and legally sustainable.

Issues

33. The following issues arise for consideration:

i. Whether the writ petition is maintainable against Respondent No. 2 in relation to the impugned termination, having regard to the objections of personal service and alternative remedy.

ii. Whether this Court should interfere with the transfer order dated 30th August, 2019, or whether that order ought to be left undisturbed in the facts of the case.

iii. Whether the order dated 6th December, 2019 can be sustained as a valid case of deemed abandonment under Clause 24.9 of the Service Rules.

iv. Whether, on Respondent No. 2's own pleaded case of wilful disobedience, unauthorised absence and misconduct, the Petitioner's services could have been terminated without a charge-sheet and disciplinary inquiry.

v. What relief should follow.

Analysis

Maintainability

34. The preliminary objection as to maintainability, in the form urged, cannot be accepted. The Petitioner does not seek enforcement of a purely private contract of service. He was appointed to a regular post in EESL, a joint venture of public sector undertakings under the Ministry of Power. Significantly, Respondent No. 2 itself justifies the impugned action by placing reliance on its service rules, transfer policy, CDA Rules, and internal regulatory framework.

35. This distinction is determinative. Where the employer is subject to public law discipline, and the action impugned is one terminating the services of a regular employee purportedly under service rules, the matter transcends the realm of a private contract. Even if the origin of the relationship is contractual, the exercise of power under such rules must conform to the requirements of fairness, non-arbitrariness, and Article 14 of the Constitution.

36. ***St. Mary's Education Society*** and ***Army Welfare Education Society*** do not assist Respondent No. 2 in the facts of this case. Those decisions turned on service disputes arising from private educational institutions where the impugned action lacked a public law element. In the present case, the impugned action is sought to be sustained on the basis of Clause 24.9 and the service framework governing a public sector entity, including reliance on the CDA Rules. The legality of such action, particularly when it results in termination of service, is clearly amenable to judicial review.

37. The objection regarding availability of an alternative remedy is equally unpersuasive. Rule 32 of the CDA Rules provides for an appeal against imposition of penalties under Rule 23 or against an order of suspension. Admittedly, the Petitioner was neither suspended nor subjected to any disciplinary proceedings culminating in a penalty. The stand of Respondent No. 2 is that the Petitioner's service came to an end by operation of Clause 24.9 of the Service Rules on account of "deemed abandonment". Having characterised the action as non-punitive to avoid a disciplinary inquiry, it is not open to Respondent No. 2 to simultaneously invoke an appellate provision applicable to penalties and suspension to defeat the present petition.

38. In any event, the rule of alternative remedy is a rule of discretion and not a bar to jurisdiction. Where the impugned action is alleged to be in violation of principles of natural justice, or where its very nature and jurisdictional foundation are in question, the writ court would not be precluded from exercising jurisdiction under Article 226. A termination of service without inquiry, where the employer itself describes the underlying conduct as wilful disobedience and misconduct, warrants examination under Article 226.

Transfer

39. The Petitioner has raised allegations in respect of the transfer order dated 30th August, 2019, contending that it followed disclosures made by him regarding financial irregularities. The record does indicate that the Petitioner had addressed communications in this regard, including the confidential observation dated 5th April, 2017, the Jharkhand stock verification report dated 30th June, 2017, and a complaint dated 25th June, 2019 to the CVO. It is also not in dispute that the Petitioner had expressed interest for posting in the Eastern Regional Cluster, Finance, whereas he was transferred to Tripura.

40. However, suspicion cannot substitute adjudication. It is a settled principle that transfer is an incident of service and that no employee can claim, as a matter of right, indefinite continuance at a particular station.[8] Equally, the furnishing of preferences, by itself, does not create an enforceable entitlement to be posted to one of the chosen stations.

41. Furthermore, Rule 4C of the CDA Rules makes it clear that the whole time of an employee is at the disposal of the employer and that he is required

[8] National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574.

to serve at such place as directed, and not to remain absent or leave the station without permission. The employer was, therefore, entitled to insist upon compliance with the transfer order and, in the event of non-compliance, to proceed in accordance with the rules.

42. Accordingly, the transfer order is not set aside, nor is any declaration made that the Petitioner was justified in not joining at Agartala. The issue that arises for consideration is confined to whether Respondent No. 2 could have brought the Petitioner's service to an end, on account of such non-joining, in the manner presented.

Deemed abandonment and misconduct

43. Clause 24.9 of the Service Rules is the sheet anchor of Respondent No. 2's case; the said clause reads as under:

> *"**24.9 Termination on account of unauthorised absence:***
> *An employee who remains unauthorisedly absent from duty or place of work either without sanction of any leave or after expiry of sanctioned leave, if any, and does not report for duty for any reason whatsoever within 90 consecutive days from the date of his/her unauthorised absence, shall automatically lose lien on his/her post and he/she shall be deemed to have voluntarily abandoned and left the service of the corporation without notice.*
> *Provided, however, if the employee subsequently substantiates and accounts for his/her unauthorized absence from duty within 90 consecutive days from the date of the termination order to the entire satisfaction of the management, the management may regularize his/her period of unauthorized absence on such terms and conditions as it may deem fit and proper."*

44. The aforesaid clause cannot be construed in isolation, divorced from constitutional requirements, principles of natural justice, and the Respondent's own disciplinary framework. The concept of abandonment is not a mere consequence of lapse of time; it necessarily involves an element

of intention.[9] An employee does not abandon service merely upon the employer's assertion or by efflux of a specified period. While prolonged absence may constitute material from which intention may be inferred, it cannot, by itself, be equated with an intention to abandon service.

45. The Supreme Court in ***D.K. Yadav v. J.M.A. Industries Ltd.***[10] held that a provision for automatic termination on account of absence cannot be applied in a manner that excludes natural justice. Termination of service entails civil consequences and must be preceded by a fair opportunity of hearing. Article 14 mandates that the procedure adopted be just, fair, and reasonable, and not arbitrary. This principle was reaffirmed in ***Uptron India Ltd. v. Shammi Bhan***,[11] where the Court read natural justice into a clause providing for automatic termination of service.

46. The same principle applies in the present case. The Petitioner had, in fact, represented against the transfer on 2nd September, 2019 and continued to address communications to the authorities thereafter. These communications may have been intemperate or may even furnish material for disciplinary scrutiny; however, they militate against any inference that the Petitioner had voluntarily abandoned service.

47. The Petitioner has correctly relied on the judgments of the Supreme ***Court in Krushnakant B. Parmar v. Union of India***,[12] and this Court in ***Sandeep Kumar Yadav v. GNCTD***,[13] to contend that the question whether absence constitutes failure of devotion to duty or misconduct necessarily requires an inquiry into whether the absence was wilful, or attributable to

[9] Vijay S. Sathaye v. Indian Airlines Ltd., (2013) 10 SCC 253.
[10] (1993) 3 SCC 259.
[11] (1998) 6 SCC 538.
[12] (2012) 3 SCC 178.
[13] 2023 SCC OnLine Del 4988.

compelling circumstances.

48. Respondent No. 2 relies upon communications dated 1st October, 2019, 30th October, 2019 and 15th November, 2019. Even assuming that these letters called upon the Petitioner to join at Agartala, they do not meet the legal threshold for the impugned action. The issue was not merely non-joining, but whether such absence was wilful, whether the explanation warranted consideration, and whether there was an intention to abandon service. The termination order does not engage with these questions; it proceeds solely on the basis that absence for more than 90 days *ipso facto* amounts to abandonment. That is not a determination, but a conclusion founded on surmise and conjectures.

49. The inconsistency in Respondent No. 2's case becomes more apparent from a reading of the counter affidavit. While seeking to justify the action as one of deemed abandonment, Respondent No. 2 simultaneously asserts that the Petitioner "wilfully" failed to report to Tripura, deliberately chose not to join, disregarded lawful directions, and breached his service obligations. It is further stated that the termination is founded on "*continued misconduct and unauthorized absence from duty"*. Once the employer itself characterises the conduct in terms of wilfulness, breach, and misconduct, the action necessarily assumes the character of disciplinary action.

50. The CDA Rules reinforce this conclusion. Rule 5 treats wilful insubordination or disobedience of a lawful and reasonable order as misconduct. It also treats absence without leave, overstaying sanctioned leave without sufficient grounds, and absence from the appointed place of work without permission or sufficient cause as misconduct. These are precisely the allegations which Respondent No. 2 levels against the

petitioner. The consequences of such misconduct could not be visited upon a regular employee without the safeguards prescribed by the rules.

51. Rule 25 explicitly prescribes the procedure for dealing with allegations of misconduct. It stipulates that, where the disciplinary authority considers that there are grounds for inquiry into any imputation of misconduct or misbehaviour, it may inquire into the matter itself or appoint an inquiry authority. Where an inquiry is proposed, definite charges must be framed. The charges, the statement of allegations, the list of documents and the list of witnesses must be communicated to the employee, who must be given an opportunity to submit a written statement. The later sub-rules provide for appearance before the inquiry authority, inspection of documents, production of evidence, cross-examination, defence evidence, written briefs, inquiry report and findings.

52. Even in cases involving minor penalties, Rule 27 requires that the employee be informed in writing of the imputations and be given an opportunity to respond. It would be anomalous to hold that while even minor penalties require adherence to minimum procedural safeguards, a regular employee can be removed from service altogether through the mechanical application of a deeming provision, without any determination of disputed facts.

53. Rule 30 further delineates the limited circumstances in which the disciplinary authority may dispense with an inquiry, namely, upon conviction on a criminal charge, or where it is recorded that holding an inquiry is not reasonably practicable or is not expedient in the interest of the security of the organisation. No such ground has been invoked in the present case. There is no recorded satisfaction to justify dispensing with the inquiry,

nor is it the case of Respondent No. 2 that such an inquiry was impracticable or contrary to security considerations.

54. What emerges from the record is that none of the safeguards contemplated under the CDA Rules were followed: no charge-sheet was issued, no articles of charge were framed, and no inquiry was conducted. There is no finding that the Petitioner had wilfully disobeyed the transfer order, that his absence was without sufficient cause, or that he intended to abandon service. The impugned action proceeds directly from non-joining to termination, without the interposition of any adjudicatory process.

55. The decision in ***Dr. P.L. Singla***, relied upon by Respondent No. 2, does not advance its case. On the contrary, it delineates the course open to an employer in cases of unauthorised absence. The employer may regularise an employees' absence if the explanation is found satisfactory; if not, it may initiate disciplinary proceedings. Such disciplinary proceedings may lead to punishment depending upon the nature of service, the post held, the period of absence and the explanation offered. The judgment does not sanction the imposition of the severest civil consequence of termination without following the process by which wilful absence and misconduct are required to be established.

56. Respondent No. 2's case, therefore, fails on either characterisation. If the impugned action is treated as one of abandonment, it is unsustainable as the conclusion of abandonment has been mechanically drawn, without a fair determination of intention or meaningful consideration of the Petitioner's representations. If, on the other hand, it is treated as termination on account of misconduct, it is equally untenable in the absence of any disciplinary inquiry.

57. There is an additional aspect. The termination letter is expressly titled *"Termination of Services from EESL"*, and the subsequent release order records that the Petitioner's services stood terminated and his name was struck off the muster rolls. This was not a mere administrative noting of cessation of employment, but a conscious decision of the employer bringing the service relationship to an end, with immediate and serious civil consequences affecting the Petitioner's status, livelihood, and service record. Such an action cannot be sustained solely on the basis of a deeming fiction.

58. This Court is conscious that employees cannot defy transfer orders and then insist that no action may follow. Public sector employers are entitled to enforce discipline and ensure compliance with administrative directions. A transfer order, unless stayed or set aside, ordinarily binds the employee, and the Petitioner's failure to join at Tripura may be a matter fit for inquiry. Nothing in this judgment should be read as endorsing his non-joining. However, discipline cannot be enforced by bypassing established procedure. The response to alleged disobedience must be in accordance with law, by framing charges, conducting a fair inquiry, and arriving at a reasoned determination. Procedural safeguards are not dispensable, even in the face of alleged misconduct.

Relief

59. The Court now turns to the question of relief, entailing contentions regarding the award of reinstatement and back wages to the Petitioner. The Petitioner has placed significant reliance on the judgments of the Supreme Court in ***Deepali Gundu Surwase*** and ***Mahadeo Krishna Naik*** to contend that once a termination is set aside as illegal, reinstatement with full back wages must follow as a matter of course. However, a closer examination of

those decisions reveals that they are fundamentally distinguishable from the present case.

60. In both these cases, the termination orders were set aside primarily because the employers were found to have acted with *mala fides*, victimization, or fraud. In ***Deepali Gundu Surwase***, while an inquiry was conducted, the resulting termination was challenged and set aside on the ground that the charges levelled against the delinquent were irrational and frivolous, suggesting the Headmistress's revengeful motive to victimize the employee for refusing to comply with a direction to pay a monthly contribution of ₹1,500 toward a property tax liability. Furthermore, the delinquent was barred from participating in the inquiry, leading the Court to note that the termination was vitiated due to violation of statutory provisions and principles of natural justice. In ***Mahadeo Krishna Naik***, the employer was held to have committed a fraud on the court by practicing *suggestio falsi* and *suppressio veri*, specifically, by suppressing a tribunal award that exonerated the employee while taking a contradictory stance before the inquiry officer. The Court noted the employer's conduct was motivated by a desire to get rid of the employee.

61. In contrast, the present case does not involve a finding of fraud or victimization. Unlike the aforesaid cases where the dismissal was held to be wrongful on account of fabricated or meritless charges in the inquiries, the termination in the case at hand is being set aside primarily because Respondent No. 2 bypassed the prescribed disciplinary process through the mechanical application of a deeming fiction, and there was simply no inquiry at all. While the Petitioner alleges the transfer was retaliatory, this Court has expressly declined to set aside the transfer order or declare the

Petitioner's non-joining as justified. The illegality here is a failure of process, not a definitive case of foisting false charges.

62. Furthermore, in the present case, the Petitioner admittedly did not join his duties at Agartala following the transfer order of 30th August, 2019. While the Court acknowledges the Petitioner's protest against the transfer, the fact of the matter remains that the Petitioner did not report for duty, a conduct which may be a matter fit for inquiry. Whether he had sufficient cause, whether his absence was wilful, whether the period should be regularised, and what monetary consequences should follow are matters which may properly be considered by the competent authority, particularly if disciplinary proceedings are initiated.

63. Unlike the precedents cited, the employer's right to proceed with a fair inquiry into the Petitioner's unauthorized absence remains intact. Respondent No. 2 shall thus be free to proceed against the Petitioner for the alleged unauthorised absence, non-compliance with the transfer order, or any connected misconduct, if it so chooses.

64. Therefore, since the termination is being set aside on the limited ground of absence of a disciplinary inquiry, the grant of full back wages at this stage would be premature. This is not a case where consequential monetary benefits must follow as a matter of course upon quashing of the order. The Petitioner's entitlement to back wages and other benefits shall, therefore, abide by the outcome of the disciplinary proceedings to be conducted by the Respondent.

Conclusion

65. The writ petition is accordingly allowed in the following terms:

a. The order dated 6th December, 2019 terminating the Petitioner's services

is set aside. the Petitioner shall be reinstated to service.

b. The consequential release order dated 6th December, 2019, circulated on 9th December, 2019, is also set aside.

c. The transfer order dated 30th August, 2019 is not set aside. No opinion is expressed on the Petitioner's allegations of *mala fides* in relation to the said transfer order.

d. Respondent No. 2 shall be at liberty to initiate disciplinary proceedings against the Petitioner for alleged unauthorised absence, non-compliance with the transfer order or any connected misconduct, in accordance with the CDA Rules. It shall, within a period of four weeks from the date of this order, take a considered decision as to whether disciplinary proceedings are required to be initiated against the Petitioner and communicate the same to the Petitioner.

e. Reinstatement shall not confer upon the Petitioner any right to claim posting at any particular station. Respondent No. 2 shall be free to decide his posting in accordance with law and administrative requirements.

f. If disciplinary proceedings are initiated, the question of back wages, regularisation of the period of absence, continuity for monetary benefits, and consequential service benefits shall abide by the final outcome of those proceedings. The competent authority shall pass a reasoned order on these aspects after giving the Petitioner an opportunity to submit a representation.

g. If no charge-sheet is issued within the time granted above, Respondent No. 2 shall, within eight weeks thereafter, pass a reasoned order on the Petitioner's pay and allowances for the period between 6th December, 2019 and the date of reinstatement, after considering his representation, the fact that the termination has been set aside, and the question whether the

Petitioner was gainfully employed during that period.

66. The writ petition is disposed of in the above terms, along with pending application(s), if any.

SANJEEV NARULA, J

APRIL 27, 2026/*hc*