

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*

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Compendium of Research Papers

January 11, 2025

FAQs on Setting Up of Offices in India

December 13, 2024

FAQs on Downstream Investment

December 13, 2024

Research Articles

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

The Revolution Realized: Bitcoin's Triumph

December 05, 2024

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper

on Simplification of registration for
FPIs

September 26, 2024

Scope of judicial interference and
inquiry in an application for
appointment of arbitrator under the
(Indian) Arbitration and Conciliation
Act, 1996

September 22, 2024