Supreme Court of India
G. T. Lad And Ors. vs Chemical And Fibres Of India Ltd. on 5 December, 1978
Equivalent citations: AIR 1979 SC 582, 1979 (38) FLR 95, 1979 LablC 290, (1979) ILLJ 257 SC, (1979) 1 SCC 590, 1979 2 SCR 613
Author: J Singh
Bench: A Koshal, J Singh, V K Iyer
JUDGMENT Jaswant Singh, J.

1. This appeal by special leave is directed against the common award dated February 27, 1976 of the Industrial Tribunal, Maharashtra, Bombay rejecting as not maintainable complaints Nos. 48 of 1973 to 63 of 1973 made by the appellants against the respondent (hereinafter referred to for brevity as 'the Company') under Section 33(A) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act') in reference (IT) No. 336 of 1972.

2. The facts material for the purpose of this appeal are:

3. The appellants (hereinafter described as 'Workmen') were employees of the Company. During the pendency of the above mentioned reference No. 336 of 1972 before the Second Labour Court, Bombay for adjudication of a dispute, 344 workmen of the Company including the appellants went on an indefinite peaceful strike with effect from August 30, 1972, pursuant to the strike notice given to the Company by their registered union called 'The Association of Chemical Workers' in support of its demand for re-instatement of three of the union leaders who had been dismissed by the Company. On the even date i.e. August 30, 1972, the Company put up a notice stating that the strike embarked upon by the workmen was illegal and those participating in the said strike were liable to disciplinary action for misconduct as per Company's certified standing orders Nos. 22 (b) and 24(a). On September 7, 1972, the Company issued notices to the appellants and 10 others asking them to report for duty on or before September 18, 1972, failing which their absence would be construed as voluntary abandonment of service and their names would be struck off from the muster rolls of the Company. On September 19, 1972, the Company sent separate communications to the appellants and 10 others informing them that since "by not reporting for duty they had confirmed its presumption that they were no longer interested to continue in service of the Company and had totally abandoned the Company's service" their names had been struck off from the rolls of the Company from that date. Along with its communication, the Company sent a cheque to each one of the appellants for the amount due to him on account of gratuity, leave salary and one month's salary. On September 26, 1972, the appellants wrote to the Company returning the cheques sent by the Company and stating that its letter dated September 7, 1972 which had reached them only on September 20, 1972 had already been replied by letter dated September 21, 1972, that they were interested in the service of the Company and had neither voluntarily abandoned the service of the Company nor did they wish to do so, and that they would, report for work the moment the strike was called off by their union. On October 23, 1972 the Company wrote to the appellants acknowledging their letter dated September 26, 1972 but stating therein that it did not wish to revise its earlier decision under which their names had been struck off the rolls. It is to be noted that in its letter the Company did not refute the averment made by the appellants in their letter dated September 26, 1972 that the Company's letter dated September 7, 1972 had reached them only on September 20,

1972. On the even date i.e., September 26, 1972, the appellants' union wrote to the Labour Commissioner complaining about the arbitrary termination of service of 25 workmen (including the appellants) and emphasising that they had not abandoned service. On October 2, 1972, the appellants and other striking workmen addressed letters to the Works Manager of the Company protesting against the action of the Company in removing them from service and asserting that the said action was by way of victimization for their participation in the strike. On March 30, 1973, the union made a formal demand calling upon the Company to re-instate the appellants and others who had been removed from service on the ground that they had abandoned their service. On May 19, 1973, certain proposals for settlements were made on behalf of the employees whose services were terminated by the Company and requesting the Company for re-instatement of the appellants and 10 other workmen. On July 5, 1973, the union wrote a letter to the Assistant Commissioner of Labour, Naupada, soliciting his intervention in the dispute concerning the re-instatement of the 16 employees including the appellants. The Assistant Commissioner thereupon summoned the parties for discussion on July 19, 1973 but his attempts at conciliation did not bear any fruit. Thereafter, the appellants made the aforesaid complaints before the Industrial Tribunal with the result as stated above.

4. Appearing in support of the appeal Mr. Ramamurti has vehemently urged that the action of the Company in removing the names of the appellants from its rolls was illegal and arbitrary, that the appellants had not abandoned the Company's service, that at any rate the termination of their services could only be in terms of the Company's standing orders and since the standing orders did not provide for treating the workmen as having abandoned service in case they were absent in connection with the notified strike, the Company's action was manifestly illegal and invalid.

Three questions arise for consideration in this case, namely:

(1) what is the true meaning of the expression 'abandonment of service';

(2) whether in the circumstances of the case it could be said that the appellants had voluntarily abandoned the service of the Company; and (3) whether the action of the Company in removing the names of the appellants from its rolls on the presumption that they had abandoned service would constitute a change in the conditions of service of the appellants ?

5. We will deal with these questions seriatim:

6. Re. Question No. 1: In the Act, we do not find any definition of the expression 'abandonment of service'. In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. According to the Dictionary of English Law by Earl Jowitt (1959 edition) 'abandonment' means 'relinquishment of an interest or claim'. According to Blacks Law Dictionary 'abandonment' when used in relation to an office means 'voluntary relinquishment. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties

pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an abandonment of office'.

7. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah and Ors. it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to bo determined in the light of the surrounding circumstances of each case.

8. Re.-Question No. 2: This takes us to the consideration of the second question, namely, whether in the circumstances of the instant case, it could be said that the appellants had voluntarily abandoned the service of the Company. It may be recalled that the appellants had along with 229 other workmen gone on indefinite and peaceful strike which ended on October 22, 1972) in response to the strike notice given by the union to the Company to press its demand for re-instatement of its three dismissed leaders and had not only by their letters dated September 21, 1972 and September 26, 1972 unequivocally intimated to the Company that they did not intend to abandon the service but had also returned the cheques sent to them by the Company on account of their leave salary gratuity etc. The appellants stand that the letter of the Company dated September 7, 1972 was received by them on September 20, 1972 and not earlier was never denied or refuted by the Company in the correspondence that passed between the parties. Thus, there was nothing in the surrounding circumstances or the conduct of the appellants indicating or suggesting an intention on their part to abandon service which in view of the ratio of Gopal Chandra Misra's case , can be legitimately said to mean to detach, unfasten, undo or untie the binding knot or link which holds one to the office and the obligations and privileges that go with it. Their absense from duty was purely temporary and could by no stretch of imagination be construed as voluntary abandonment by them of the Company's service. In Express Newspaper (P) Limited v. Michael Mark and Anr., which is on all fours with the present case, it was held that if the employees absent themselves from the work because of strike in enforcement of their demands, there can be no question of abandonment of employment by them. In the present case also the appellant's absence from duty was because of their peaceful strike to enforce their demand. Accordingly, we are of the view that there was no abandonment of service on the part of the appellants.

9. Re.-Question No. 3: Let us now advert to the last but the most crucial question, namely, whether the action of the Company in removing the names of the appellants from its rolls during the pendency of the proceedings before the Labour Court in respect of the industrial dispute on the presumption that they had abandoned Company's service constituted an alteration in the conditions of service applicable to them immediately before the commencement of the said proceedings which

prejudiciously affected them. Although the learned Counsel appearing on behalf of the respondent has taken us through the certified standing orders as applicable to the appellants, he has not been able to point out anything therein to indicate that the company could terminate the services of the appellants on the ground of abandonment of service because of their going on strike in enforcement of their demands. Thus, their being no provision in the certified standing orders by virtue of which the Company would have terminated the services of the appellants in the aforesaid cicumstances, the impugned action on the part of the Company clearly amounted to a change in the condition of service of the appellants during the admitted pendency of the industrial dispute before the Labour Court which adversely affected them and could not be countenanced. We are fortified in this view by the aforesaid decision of this Court in Express Newspapers (P) Limited v. Michael Mark and Anr. (Supra) where repelling an identical contention to the effect that the failure of the workmen to return to work by a notified date clearly implied abandonment of their employment, it was held that the management cannot by imposing a new term of employment unilaterally convert the absence of work into abandonment of employment. It was further held in that decision that if the strike was in fact illegal, the management could take disciplinary action against the employees under the standing orders and dismiss them. If that were done, the strikers would not have been entitled to any compensation under standing orders but that was not what the appellants purported to do and the respondents were, therefore, entitled to relief.

10. For the foregoing reasons, we are unable to uphold the impugned action of the Company and the award under appeal which are manifestly illegal. In the result, we allow the appeal, set aside the aforesaid award of the Industrial Tribunal and direct the Company to reinstate the appellants. The appellants shall also be entitled to the costs of the appeal.

11. A point which requires to be clarified and has been brought to the notice of the Court after the judgment was delivered relates to back wages from 19-9-72 to the date of reinstatement. The rule in such cases is that where reinstatement has been directed by the Court, the entire back wages must follow as a matter of course. Of course there is a discretion in the court having regard to special circumstances if any to modify this normal rule. In the present case the period stretches over six years and Shri Sachine Chaudhary brings to our notice the fact that back wages have to be computed, if ordered in full, on a much higher scale because of two settlements which have raised the scales of wages substantially. While there is no case specifically put forward that the workmen concerned have been employed elsewhere during this period, still we take a total view the whole case and direct that for the entire period from 1972 to the date of reinstatement, 75 per cent of the wages will be paid to all the workmen concerned on the scales and revised scales as the case may be.