

Courts; Delhi vs Swayam Prakash Sirivastava on 7 March, 2009

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IN THE COURT OF SHRI SANJAY GARG : POLC ; V ; KARKARDOOMA
COURTS; DELHI.

ID No. 836/08

BETWEEN

The management of M/s. Jawahar Lal Nehru University,
New Mehrauli Road, New Delhi.

AND

The workman Dr. (Mrs.) Manju Sagar,
10, Mini Campus, Behind Nalanda Hostel, IIT,
New Delhi-110016.

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| DATE OF INSTITUTION | : 8.9.83 |
| DATE OF ARGUMENTS | : 25.2.09 |
| DATE OF AWARD | : 7.3.09 |

AWARD

The Secretary (Labour), Govt. of N.C.T. of Delhi has referred the Industrial Dispute for adjudication to this Court vide Order No. F.24(769)/83-LAB.11334 dated 23.6.83 in the following terms of reference :

'Whether the termination of services of Dr. (Mrs.) Manju Sagar is illegal and/or unjustified, and if so, to what relief is she entitled and what directions are necessary in this regard?

2. The facts in brief as mentioned by claimant in her statement of claim are that she was employed as a Doctor by Jawahar Lal Nehru University (hereinafter called as JNU) w.e.f. 19.12.78. She was confirmed by the Executive Council of JNU with effect from the date of her appointment. She

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applied for leave for one year on July 8, 1980 as she wanted to accompany her husband who had got an assignment in Libya. She was granted leave by JNU vide their office order No. 522 dated 11.9.80 for the duration 7.10.80 to 6.10.81. She wrote to JNU seeking permission to take suitable job in Libya, which was granted for a period of 6 months. From the date she got the

employment, vide its letter dated 31.1.81 she was asked by JNU to submit the particulars of her employment, which were supplied to JNU on 16.6.81 with the request to extend her leave upto 22.9.82. During the month of August'81 she came to India for a month. On making enquiries with the office of JNU regarding her leave application she was told that her leave application is under consideration. She made several visits to the office of the JNU and every time she was told that her application is under consideration. About the same time JNU put a notice in the Employment Exchange for the temporary post of lady medical officer stipulating that the vacancy for one year.

3. She sent a letter dated 16.9.81 to JNU from Libya reminding it about her previous applications for extension of leave upto 22.9.82. But no reply was received from JNU. Further vide letter dated 17.10.81, she requested JNU to grant her leave on account of illness of her husband. In spite of various reminders no reply was received by her. Again she wrote a letter dated 2.11.81 to JNU asking for extension of leave at least upto 1.3.82 as it was not possible for her to complete the formalities of exit visa and to leave Libya before 1.3.82. But no reply was received from JNU. She sent an other reminder and also a telegram on 2.12.81 requesting for extension of leave but no reply was received from the management. On 27.1.82 she received office copy of the order No. 697 dated 31.12.81 from the JNU wherein it was alleged that she had not reported for duty after expiry of her leave on 5.12.81 and accordingly she deemed to be resigned from the said job. She immediately sent letter dated 27.1.82 to the JNU stating that she had never resigned from

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her job and she be allowed to join duties but it was not replied. She made representations to JNU against the said letters but no reply was received. It is stated that she was never informed by the University Authorities regarding her application for extension of leave and she was kept in dark. It is stated that had she been informed in August'81 that her leave application will not be extended she would not have gone back to Libya. It is stated that order of termination of her service is malafide and without any basis. It is stated that resolution of executive council meeting of JNU dated 27.1.82 is based on misrepresentation of facts. She has sought the relief of reinstatement with back wages and continuity of service.

4. The management contested the claim and filed written statement taking two preliminary objections. It is stated that the JNU has been constituted under an Act of Parliament and for this reason the appropriate Government is the Central Government and thereafter this Court has no jurisdiction to entertain this dispute. It is stated that claimant is a qualified doctor and was not discharging any clerical, manual, supervisory or technical work and she cannot be equated with a workman. On merits, it is stated that claimant was granted permission to take up the job for a period of 6 months from date of appointment in Libya and she was required to inform the management the detailed particulars of the job. The claimant violated this condition and took an employment under Government of Libya for a period of one year. As per leave rules she was entitled to leave if she takes an employment outside for a period of 6 months only. It is stated that claimant had less than 3 years service to her credit and she knew that her leave for

working outside JNU was limited to the extent of 6 months only and could not be extended but in spite of that she took up employment for a period exceeding 6 months in violation of the permission granted and then absented herself from duty. She was informed to resume duty on or before 7.10.81 and

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she was also warned that if she failed to join her duty then her services shall stand terminated but in spite of that she did not resume her duty. It is denied that management ever advised the claimant that her application for extension of leave was under consideration. It was made clear to claimant and her father-in-law who came to the office of the University that her request for extension of leave cannot be entertained. Decision of not granting extension of leave was conveyed to the claimant not only by way of ordinary letters but also by cable on 11.9.81 and also to her father-in-law who was acting as her attorney in India. As the claimant failed to resume duty as directed on or before 7.10.81, the management took a lenient view and gave one more opportunity to her to resume duty before 5.12.81. In the said letter it was made clear to the claimant that in case she failed to resume duty on or before 5.12.81 she would be treated as having resigned from the post. Since claimant failed to resume duty, her name was struck off and she ceased to be an employee of the management. It is stated that she was treated as deemed to have resigned or in other words having abandoned the service w.e.f. 5.12.81 and decision to this effect was communicated to her vide office order No. 697 dated 31.12.81 at her address in Libya. It is stated that the claimant committed serious misconduct entitling the management to remove her name from the register of employees.

5. It is denied by the management that claimant was not informed about the decision of the University regarding her extension of leave. The claimant was not only informed at Libya but also at her Delhi address and also to her father-in-law. Several opportunities were given to claimant for resuming duty but she failed to resume duty and accordingly it was presumed that she has abandoned her service. It is stated that claimant was informed that in case she failed to resume duty on or before 5.12.81. it would be presumed that she has resigned. It is denied that management ever received the letter dated

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27.1.82 from the claimant. The service of the claimant were terminated in accordance with proper procedure laid down under the rules and regulations of the University and decisions were taken by the Competent Authority.

6. Workman filed rejoinder to the written statement of the management reiterating her submissions in her statement of claim and denying the averments made by management in its written statement.

7. On the pleadings of the parties following issues were framed on 6.11.84 :-
 - (1) Whether this Court has no jurisdiction as alleged in para-1 of the preliminary objections of the written statement? OPM
 - (2) Whether the petitioner was a workman with the management? OPW

- (3) Whether the petitioner abandoned the service w.e.f. 5.12.82 as alleged in the written statement? If so, its effect.
- (4) As per terms of reference.
- (5) Relief.

8. In evidence workman examined two witnesses. WW1 is the workman herself and she filed her affidavit Ex.WW1/A. She filed the documents Ex.WW1/1 to Ex.WW1/5A. Ex.WW1/1 which is the copy of the statement of claim, Ex.WW1/2 is the list of 19 documents relied upon by claimant, Ex.WW1/3 is the rejoinder filed by her, Ex.WW1/4 is the notice under order 12 rule 8 CPC dated 9.8.02 sent by claimant to management demanding production of the documents mentioned in Ex.WW1/5 is the copy of the order of Vice Chancellor of JNU terminating services of the claimant and Ex.WW1/5A is the copy of the order of the Vice Chancellor of JNU terminating services of the claimant produced by the management. WW2 is Sh. Bhim Singh Chatola, Senior Asstt. (Administration) of JNU. He filed documents

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Ex.WW2/X, Ex.WW2/Y and Ex.WW2/Z. The management examined MW1 Sh. M.K. Prabhakar, Asstt. Registrar (D) of JNU. He tendered his affidavit Ex.MW1/A and relied upon the documents Ex.DW1/1 to DW1/15. Ex.DW1/1 is the application dated 15.12.80 written by claimant to Vice Chancellor, JNU seeking permission to take up job as a special case in Libya. Ex.DW1/2 is the letter dated 30.1.81 written by Dy. Registrar to claimant intimating her regarding permission to take up a suitable job in Libya for a period of six months. Ex.DW1/3 is the employment agreement between the claimant and Government of Libya in Urdu, Ex.DW1/4 is the letter dated 31.8.1981 from Dy. Registrar to claimant informing her that his request for extension of leave from 7.10.81 to 22.9.82 has not been accepted and advising her to resume duties by 7.10.81, Ex.DW1/5 is the copy of the dispatch register vide which the letter was sent to claimant, Ex.DW1/6 is the cablegram sent by Dy. Registrar, JNU dated 11.9.81 to claimant informing her to resume duty by 7th October as her request for extension of leave not sanctioned, Ex.DW1/7 is the postal receipt, Ex.DW1/8 is the letter dated 18.9.81 written by claimant to Vice Chancellor, JNU requesting for extension of leave upto 22.9.82, Ex.DW1/9 is the letter written by Sh. K. Sagar, father-in-law of the claimant dated 3.10.81 to Vice Chancellor requesting to consider claimant's request for extension of leave on compassionate and humanitarian grounds, Ex.DW1/10 is an other letter written by Sh. K. Sagar dated 19.10.81 to Vice Chancellor, Ex.DW1/11 is the letter written by Registrar, JNU Sh. P.N. Sharma dated 26.10.81 to claimant informing her about rejection of her request for grant of leave and asking her to join duty latest by 5.12.81, Ex.DW1/12 is the dispatch register vide which letter Ex.DW1/11 was sent, Ex.DW1/13 is the office order dated 31.12.81 issued by Registrar Sh. P.N. Sharma stating that since claimant has not resumed duty after expiry of her leave, therefore, she is deemed to have resigned her appointment with the University w.e.f. 5.12.81 (A.N), Ex.DW1/14 is the cablegram sent by Dy. Registrar dated 27.2.82 to claimant at her Libya

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address informing her that she is deemed to have resigned from 5.12.81 and Ex.DW1/15 are the rules regarding extra ordinary leave to its employees.

9. Heard arguments of Sh. P. Jagirdar, Ld. AR for workman and Sh. Prashant Sharma, Ld. AR for management. Both the parties also filed written submissions. Perused the record.
10. On my due consideration of material on record; submissions made by AR for parties and relevant legal provisions and case law; my findings on issues are as follows :

ISSUE NO. 1

11. The management has taken objection in para no.1 of its preliminary objections of its written statement that since JNU has been constituted under the Act of Parliament i.e. Jawahar Lal Nehru University Act, 1966, for this reason the appropriate Government under the Industrial Disputes Act is Central Government.
12. The Ld. AR for workman contended that section 2 (a) defines appropriate Government. In case of the various institutions mentioned in section 2(a) (i), the appropriate Government is the Central Government and as per section 2(a) (ii) in relation to other industrial disputes the appropriate Government is the State Government.
13. The definition of appropriate Government being Central Government as provided u/s 2 (a) (i) of the I.D. Act is exhaustive. The names of the various Central Government institutions if there exist any dispute involving these institutions are found mentioned here. The name of the management i.e. JNU

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is not found mentioned here. Therefore, JNU falls under section 2(a) (ii) and the appropriate Government is the State Government. This issue is accordingly decided in favour of the workman and against the management.

ISSUE NO.2

14. The Ld. AR for management contended that claimant is a qualified doctor and she had been employed by JNU for its Medical Centre to treat residents of the Campus and she was not discharging any clerical, manual or routine duties. It is argued that she was a professional and professional is not a workman. On the other hand Ld. AR for workman contended that claimant was neither appointed as professional doctor nor she was charging any fee. She was only assisting and reporting to doctor S.B. Aggarwal, the Incharge of the Health Centre. It is stated that claimant had no control over the staff working in the Health Centre and she was not supervising the function of any staff members and she was only appointed on technical capacity as a doctor. The Ld. AR for workman has vehemently urged that law is settled that

designation or the salary of a person is not important and the true test to ascertain whether a person falls in the definition of workman as defined u/s. 2(s) of the Industrial Disputes Act, is the nature of duties performed by him.

15. The definition of workman is provided u/s. 2(s) of the I.D. Act which runs as follows :-

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes

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any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

16. During her cross-examination no question has been put by the AR for management regarding the nature of duties being performed by claimant while in employment of the management. During cross-examination MW1 Sh. M.K. Prabhakar, Asstt. Registrar of the University has admitted that Dr. S.B. Aggarwal was Incharge of the Health Centre and was authorised to take disciplinary action against the staff members and was also authorised to sanction leave of the staff members. The workman used to report to Dr. Aggarwal.

17. It is admitted case of both the parties that claimant was working as a doctor and was posted in Health Centre of the JNU Campus. Dr. S.B. Aggarwal was the Incharge of the Health Centre and being Incharge he was

authorised to take disciplinary action and sanction leave of the staff members posted in the Health Centre. It being a Health Centre, the claimant being doctor in medicine, her predominant duties must have been to check up the patients and prescribe suitable medicines for their treatment.

18. The management in support of its contentions has relied upon Muir Mills Unit of N.T.C Ltd. Vs. Swayam Prakash Sirivastava, 2007 LLR 225 (230), where the Apex Court has observed as follows :-

"Furthermore if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions : ministry, medicines and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore, "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value, and importance of its particular oath in the practice of that profession. A member of a profession is termed a professional. However, professional is also used to the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense a sport is a profession. Therefore, it is clear that respondent No. 1 herein is a

professional and never can a professional be termed as a workman under any law?"

19. The Ld. AR for claimant contended that she was working under the control of Dr. S.B. Aggarwal and she used to assist Dr. Aggarwal. It is argued that designation of a person or salary is not important to ascertain whether a person is a workman or not, the true test is nature of duties performed by him. It is further submitted that the judgment relied upon by management is not applicable to the facts of this case and can be differentiated on the basis of facts. I agree with the contentions raised by Ld. AR for workman that the designation of a person may be camouflage and is not the sole deciding factor. Whether a person is squarely covered under the definition of "workman" or not, the nature of duties performed by him are the true deciding factor to ascertain that. The reliance is placed upon Anand Regional Co-operative Oil Seedsgrowers Union Ltd. Vs. Shaileshwar Harshadbhai Shah 2006 III LLJ 767.

20. Reliance is also placed upon Sonepat Cooperative Sugar Mills Limited Vs. Ajit Singh- (2005) 3 SCC 23. The Supreme Court has again surveyed the entire case laws as to who is workman and held as under :-

"Thus, a person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of the definition of workman. The job of a clerk, ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regards the dominant nature thereof. With a view to give effect to the expression to do "any manual, unskilled, skilled, technical, operational, clerical or supervisory work", the job of the employee concerned must fall within one or the other category thereof. It would, therefore, not be correct to contend that merely because the employee had not performing any managerial or supervisory duties, ipso facto he would be a workman."

21. The claimant was a lady medical officer in the Health Centre of the management. It is admitted case of the management, as stands admitted by MW1 during his cross-examination that Sh. S.B. Aggarwal, Incharge of the Health Centre was authorised to take disciplinary action against the staff members and was authorised to sanction leave of the staff members. The claimant being a doctor and posted as a lady medical officer, the kind of duties being performed by her is not required to be discussed as one can very well assume the nature of duties performed by her. The word "Doctor" has been defined in the Web Dictionary at www.dictionary.com as :-

" Who gives medical treatment to ; act as a physician to ; to treat an ailment ; apply remedies to."

22. Whether doctor is covered under the definition of workman, the Kerala High Court has ruled in 2007 LLR 411, the case titled Mar Baselius Medical Mission Hospital Vs. Joseph Babu in favour of the workman. The relevant observation of the High Court is as follows :-

"..... Therefore, the determinative factor is main duties and functions of the employee concerned. Of course, the question as to whether the first respondent is exercising any supervisory duties is not an issue here. But from the above decision, it is clear that for determining the question as to whether a particular person is a workman as defined in the Industrial Disputes Act, what is relevant is the functions and duties performed by him and the designation given to an employee is not of much importance.

In this case, the petitioner terms the 1st respondent as "consultant physician". But it is not disputed before me that he is a full time employee of the petitioner hospital. The only duties he perform in the hospital is of examining the patients, diagnosing their diseases and prescribing medicines for them. This would certainly come within the ambit of the words "skilled and technical". Unlike in the case of a legal assistant, the 1st respondent herein is not expected to exercise any other duties involving creativity as mentioned in the Ajith Singh's case (supra). I am of opinion that a doctor who performs the duties of examining patient, diagnosing diseases and prescribing medicines, whatever designation by which he is called would certainly be doing work

of a skilled and technical nature and therefore would be a 'workman' as defined in section 2(s) of the Industrial Disputes Act."

23. The findings in Joseph Babu's (supra) is predicated on the premise that doctor is exercising duties where no creativity is involved and job of a doctor is a stereotype job. In my opinion by no stretch of imagination job of a doctor can be said to be stereotype job, not involving any sort of creativity. Because, though suffering from the same disease every patient has its own set of background and symptoms and considering and evaluating these facts and symptoms doctor is supposed to medicate the patient. If symptoms are found to be complex and patient is found to be not responding to the medication, in that scenario, doctor on the basis of his knowledge and experience obtained during training, make decisions to refer the patient to a specialised hospitals.

24. The reliance is also placed upon the decision of the Bombay High Court in WP Nos. 3730 to 3734/1193 dated 4.8.96, the case titled M.M. Wadia Charitable Hospital Vs. Umakant Ramchandra Warerkar (Dr.). The relevant portion of para 11 runs as follows :-

".....As stated hereinabove, with the progress in our day to day life, the concept of profession stands extended to large number of occupations which earlier may not be the case, but that does not mean that conceptually or otherwise, a professional who renders service to the society in various forms becomes a 'workman' under Section 2(s) of the Industrial Disputes Act, 1947. At the cost of repetition, I once again state that in the present case, the relationship between the patient and doctor is not created at the instance of the hospital. The patient has immense faith and confidence in a particular doctor. The patient has trust and to certain extent, the doctor has a fiduciary duty towards the patient which concept will be totally obliterated if these doctors are treated as 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947."

25. Keeping in view the various facts and circumstances discussed above, the claimant being a doctor is held not to be a workman as defined u/s. 2 (s) of the I.D. Act. This issue is accordingly decided in favour of the management and against the workman.

26. The plea of the management is that vide letter dated 26.10.81, after taking lenient view, claimant was given another opportunity to join duty latest by 5.12.81 and she was duly informed that as per the rules and regulations her failure to join duty shall be deemed as resignation but despite that she did not join duty and accordingly she abandoned the job. On the other hand Ld. AR for workman vehemently contended that claimant applied to the JNU for extension of her leave upto 22.9.82 vide her letter dated 16.6.81 but the management despite her various reminders gave no reply to her request. It is submitted that in August'81 when claimant visited India for a month, she had made several enquiries with the office of the management regarding her leave application and every time she was kept in dark telling that her extension of leave application is under consideration. Therefore claimant sent a letter dated 2.11.81 requesting JNU for extension of leave at least upto 1.3.82. The Ld. AR for claimant argued that without considering various requests made by her for extension of leave upto 22.9.82 or at least upto 1.3.82, the management without following the rules and

regulations i.e. section 31 of Jawahar Lal Nehru University Act, illegally terminated her.

27. In her evidence claimant has relied upon various documents mentioned in EX.WW1/2. She has filed photocopies of the 19 documents mentioned in Ex.WW1/2. The claimant has put documents Ex.MW1/W1 and Ex.MW1/W-2 to management witness MW1 during his cross-examination. Ex.WW1/4 is the notice under order 12 rule 8 CPC stated to have been sent by claimant to management requiring it to produce 16 documents mentioned in it. The management witness MW1 has relied upon 15 documents to substantiate its defence.

28. From the pleadings of the parties and the various documents filed by them the picture which emerges is that claimant applied for extra ordinary leave on 8.7.80 and the management granted her leave from 7.10.80 to 6.10.81. Vide letter dated 30/31.1.81 which is Ex.DW1/2, claimant was permitted to take suitable job in Libya and she was asked to submit the terms and conditions of her employment. Ex.DW1/3 is the Local Employment agreement entered between claimant and Libyan Arab Republic. The claimant vide her letter dated 16.6.81 which is Ex.MW1/W-2 applied for extension of her leave upto 22.9.82. After this letter of the claimant seeking extension of her leave upto 22.9.82, the dispute arose between the parties.

29. As per the claimant she did not hear anything from the University regarding her request for extension of leave upto 22.9.82 or at least upto 1.3.82, despite various letters dated 16.9.81 and 2.11.81 written by her and suddenly she received copy of the order passed by JNU which is EX.DW1/13 stating that she is deemed to have resigned from service w.e.f. 5.12.81.

30. Whereas the plea of the management is that claimant was fully aware about the status of her application seeking extension of leave but despite that she chose to stay back in Libya. Vide letter Ex.DW1/2 she was only permitted to accept the job for a period of 6 months with effect from the date of getting employment in Libya but despite that as per the employment agreement Ex.DW1/3 filed by her, she entered into an agreement for one year from 16.2.81 to 16.2.82. Vide letter Ex.DW1/4 she was intimated both at her Libyan address and New Delhi address about non-acceptance of her request for extension of leave from 7.10.81 to 22.9.82. Ex.DW1/6 was the cablegram sent to claimant at Libyan address. Even father-in-law of the claimant Sh. K. Sagar made representations which are Ex.DW1/9 and DW1/10 to the Vice Chancellor of the management requesting for her extension of leave. Ex.DW1/11 is the letter sent by Registrar of the management to the claimant at her Libyan address asking her to join duty latest by 5.12.81 failing which she will be deemed to have resigned from the post. Since she failed to join duty by 5.12.81, vide letter Ex.DW1/13 the Registrar after getting approval of the Vice Chancellor ordered that claimant be treated as deemed to have resigned from her appointment w.e.f. 5.12.81.

31. The three letters Ex.DW1/4, cablegram Ex.DW1/6 and Ex.DW1/11 are denied to have received by the claimant. Whereas the letter Ex.DW1/13 dated 31.12.81 sent to the workman informing her regarding cessation of her service probably sent at the same address was duly received by the claimant. To prove dispatch of letters and cablegram Ex.DW1/4, Ex.DW1/6 and Ex.DW1/11, the management has relied upon dispatch register Ex.DW1/5, Ex.DW1/7 and Ex.DW1/12. Though management has failed to produce the original postal receipt but on the basis of the dispatch

registers filed on record there is due presumption in favour of the management that these letters must have been sent to claimant at her available Libyan address. Admittedly by the claimant she received the letter Ex.DW1/13 at the same address sent by management. If claimant had received letter Ex.DW1/13, then I find no reason that why she did not receive the letters Ex.DW1/4, Ex.DW1/6 and Ex.DW1/11, at the same address.

32. As averred by claimant regarding her application for extension of leave upto 22.9.81 for at least upto 1.3.82 she was kept in dark. Even her subsequent letters and telegram dated 2.12.81 was not replied by the management. She remained totally ignorant about the status of her leave extension application and suddenly she get shocked to receive the letter of her deemed termination which is Ex.DW1/13 received by her on 27.1.82. But the various facts and circumstances discussed above tells a different story. Firstly, no reason has been given by claimant that why she entered into an employment agreement with Libyan Government for one year despite the permission given by management to seek employment only for 6 months. Secondly, tenure of employment as per Ex.DW1/3 i.e. agreement between claimant and Libyan Government was upto 16.2.81 to 16.2.82 whereas sanctioned leave of the claimant was only upto 6.10.81. The conduct of the claimant by entering into an employment agreement with the Libyan Government from 16.2.81 to 16.2.82 beyond the period of her one year sanctioned leave shows that she was determined to prolong her stay in Libya beyond the outer limit of her sanctioned leave. Thirdly, as per the extra- ordinary leave rules Ex.DW1/15 applicable to the claimant she was entitled only extra-ordinary leave upto 6 months but considering her request taking liberal view management sanctioned her extra ordinary leave for one year w.e.f. 7.10.80 to 6.10.81. The claimant has repeatedly stated that when she visited India in August'81 and enquired from JNU about her leave application she was always assured that her application is under consideration. It has nowhere been averred by the claimant if any senior official of the JNU ever assured her that her request for extension of leave will be sanctioned. The management had already given more than due to her and she built her castles in the air presuming that her leave will be extended. Fourthly, Ex.DW1/9 and DW1/10 are the letters written by Sh. K. Sagar, father-in-law of the claimant addressed to Vice Chancellor, JNU requesting her to extend her leave as applied for. The bare perusal of these letters shows that claimant and her father-in-law were very well aware that leave is granted in accordance with the duration of service. It shows that claimant was very well aware that she is already enjoying more leaves than due to her as per rules and regulations.

33. The other contention raised by Ld. AR for claimant is that she was permanent employee of the management and section 31 of Jawahar Lal Nehru University Act provides that the 3 months notice is mandatory to an employee before terminating his service. It is argued that she was victimised by the management as the management wanted to accommodate Dr. Anuradha Chauhan in her place. The claimant has further contended that while considering her application for extension of leave she was discriminated vis-a-vis similar case of Dr. S.B. Aggarwal and as per record Dr. Aggarwal was granted extra ordinary leave for more than 2 years, twice, whereas under the rules no person will be given leave for more than once. Section 31 (2) (3) of Jawahar Lal Nehru University Act provides as follows :-

(2) No such employee shall be removed under clause (1) until he has been given a reasonable opportunity of show-

cause against the action proposed to be taken in regard to him.

(3) Where the removal of such employee is for a reason other than that specified in sub clause (c) or sub clause (d) of clause (1), he shall be given three months' notice in writing or paid three months' salary in lieu of notice."

34. On the other hand, Ld. AR for management submitted that claimant was never victimised by JNU rather she was sanctioned extra-ordinary leave for one year despite the rules permitting leave for 6 months. It is argued that case of Dr. S.B. Aggarwal is entirely different from the case of the complainant and she cannot claim any parity with Dr. Aggarwal. It is further submitted that absence of notice in the facts of this case made no difference. In support of his contention, the Ld. AR has relied upon (2000) 7 SCC 529, the case titled Aligarh Muslim University and another Vs. Mansoor Ali Khan. In this case the point for consideration before the Apex Court as per para 6 was as follows :-

"5. Whether on the facts of the case, Mr. Mansoor Ali Khan can invoke the principle of natural justice and whether it is a case where, even if notice had been given, the result would not have been different and whether it could be said that no prejudice was caused to him if on the admitted or proved facts, grant of an opportunity would not have made any difference?"

35. The relevant observation of the Apex Court in para 20 to 23 is as follows :-

20. This is the crucial point in this case. As already stated under Point 4, in the case of Mr. Mansoor Ali Khan, notice calling for an explanation had not been issued under Rule 5 (8) (i) of the 1969 Rules. Question is whether interference is not called for in the special circumstances of the case.

21. As pointed recently in M.C. Mehta vs. Union of India there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao vs. Govt. of A.P., it is not necessary to quash the order merely because of violation of principles of natural justice.

22. In M.C. Mehta it was pointed out that at one time, it was held in Ridge Vs. Baldwin that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto"

prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In *S.L. Kapoor Vs. Jagmohan Chinnappa Reddy, J.* followed *Ridge Vs. Baldwin* and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23. Chinnappa Reddy, J. in *S.L. Kapoor* case laid down two exceptions (at SCC p. 395) namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception. "

36. In *Aligarh Muslim University (Supra)* case the notice calling for explanation had not been issued under rule 5 (8) (i) of the 1969 rules applicable to Mr. Mansoor Ali Khan, an employee of the University. An analogy can be drawn between the notice "calling for an explanation" in the 1969 rules pertaining to Aligarh Muslim University and requirement of three months notice and giving reasonable opportunity of show cause required u/s. 31 of Jawahar Lal Nehru University Act, 1966. In this case the Apex Court relying upon its earlier decision in *S.L. Kapoor Vs. Jagmohan*, (1980) 4 SCC 379, has held that if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash order which was passed in violation of the natural justice. The Apex Court has further relied upon its earlier decision in the matter *Sh. K.L. Tripathi Vs. State Bank of India* (1984) 1 SCC 43, wherein it was observed that not mere violation of natural justice but defecto prejudice (other than non-issue of notice) had to be proved.

37. Like the facts of present case, in that case also Mr. Mansoor Ali Khan after taking leave from the University had gone to Libya. He also sought extension of leave, which was not allowed by the University Authorities and he was directed to resume duties. But instead of resuming the duties he continued his stay in Libya and accepted a further contract there. The University refused the extension and deemed that he has vacated his job. It was in the background of these facts that the Apex Court held that notice under rule 5 (8) (i) would not have made any difference and the case falls within the exception noted in *S.L. Kapoor's* case (supra). The relevant observations of the Apex Court in para 28, 29, 32 and 33 are as follows :-

"28. We may state that the University has not acted unreasonably in informing him in advance-- while granting one year extension, in addition to the initial absence of 2 years --- that no further extension will be given. We have noticed that when the extension is sought for three years, the Department has given him extension only for one year as he had already availed 2 years' extra ordinary leave by that time. It has to be noticed that when employees go on foreign assignments which are secured by them at their own instance, in case they do not come back within the original period

stipulated or before the expiration of the extended period, the employer in the parent country would be put to serious inconvenience and will find it difficult to make temporary alternative appointments to fill up the post during the period of absence of those who have gone abroad. However, when rules permit and provide for an employee to go abroad discretion must be exercised reasonably while refusing extension. In this case, giving of further extension only for one year out of the further period of three years sought for is not unreasonable. In such a situation, if the employee has entangled himself into further commitments abroad, he has to blame himself.

29. On the above facts, the absence of a notice to show cause does not make any difference for the employee has already been told that if his further overstay is for continuing in the job in Libya, it is bound to be refused.

32. Let us then take two situations. An employee who is permitted to be abroad for two years on a job extension for 3 years it is granted extension only for 1 year and is also told in advance that no further extension will be given and if he does not join after the 1-year extended period, he will be deemed to have vacated office. Let us assume that he does not join as advised and, in a given case, notice is given calling for his explanation. He applied stating that he entered into a further commitment for two years and want one more year of extension. The University refuses extension treating the explanation as unsatisfactory and under Rule 5 (8) (i) deems that he has vacated his job. No fault can be found in the procedure. Let us take another situation where the officer does not join in identical circumstances but is not given notice under Rule 5 (8) (i). He has no other explanation

- from what is revealed in his writ petition filed later--- other than his further commitment abroad for 2 more years. In the latter case, it is, in our opinion clear that even if no notice is given, the position would not have been different because that particular explanation would not be treated as satisfactory had already been intimated to him in advance. Therefore, the absence of a notice in the latter situation must be treated as having made no difference. That is precisely the position in the case of Sh. Mansoor Ali Khan.

33. Another important aspect of the matter is that no new reason has been projected in the writ petition of Mr. Khan for his seeking further extension earlier while in Libya. The only reason stated is that he had obtained further extension in a job. It is not a case where there is a plea in the court that there were different grounds or reasons which he could have put in his explanation, if called for, such as ill health etc. Indeed, if the reasons could have been somewhat different, as may perhaps be disclosed or proved in a subsequent writ petition ----such as his own failing health, one can understand. But so far as leave for purposes of job continuance in Libya is concerned, he has been fully put on advance notice that no further extension will be given. It must be held that no prejudice has been caused even though no notice is

given under Rule 5 (8) (i).

38. To my mind facts of the present case are almost identical to the facts of Aligarh Muslim University case (supra). Here in this case also vide its letter Ex.DW1/11 JNU has informed the claimant about rejection of her request for grant of leave and asking her to join duty latest by 5.12.81 which claimant failed to do. In the earlier paras receipt and acknowledgment of this letter to the claimant is already presumed. Moreover, as already noted the conduct of the claimant in entering into an employment agreement beyond the period of leave sanctioned by the management undoubtedly goes to establish that she was determined to continue her stay in Libya in the company of her husband.

39. To prove her victimisation and discrimination vis-a-vis the case of Dr. S.B. Aggarwal for sanction of extra-ordinary leave claimant has relied upon Ex.WW2/X, WW2/Y and WW2/Z which are copies of the service record of claimant, Dr. S.B. Aggarwal and Dr. Anuradha Chauhan respectively. Admittedly by the claimant service of Dr. S.B. Aggarwal was more than her. Accordingly, to my mind she cannot seek parity for sanction of extra-ordinary leave with the case of Dr. S.B. Aggarwal. Assuming as contended by claimant even if contrary to rules extra ordinary leave was sanctioned to Dr. S.B. Aggarwal, claimant cannot as a matter of right claim that her leave be also sanctioned violating the rules governing sanction of leave.

40. The plea of the management is that since claimant failed to assume duty w.e.f. 5.12.81 she accordingly abandoned the service and as per the rules she was deemed to have resigned from her post. The abandonment has been defined by the Apex Court in G.T. Lad Vs. Chemicals Fibres of India Ltd. 1979 (38) 95 (S.C.). The Apex Court has observed 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. 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 be determined in the light of the surrounding circumstances of each case.

41. The law is settled that burden of proving abandonment lies upon the management. The reliance in this regard is placed upon 2004 (8) SCC 222, the case titled Nics (India) Tools Vs. Surat & anothers, and also on the decision of Honible Delhi High Court in WPC No. 949/08, the case titled Chandra Prabhu International Ltd. Vs. Sh. Ram Avtar.

42. Already discussed conduct of the claimant in entering into an agreement beyond the period of her sanctioned leave and continuing her stay in Libya in spite of the knowledge that her application for extension of leave has been rejected fulfills all the ingredients of abandonment defined by Apex Court in G.T. Lad (supra) case. The management is thereby held to have proved abandonment of job on the part of the claimant. This issue is decided in favour of the management and against the workman.

43. The last contention raised by claimant is that wrong facts were put before the Vice Chancellor regarding length of her sanctioned leave which prejudiced him in terminating her service on the

basis of deemed resignation. On the same lines it is contended that by misrepresenting the facts Executive Council who removed the claimant from service, made to ratify the decision of the Vice Chancellor. Ex.WW1/5 is the resolution of the Executive Council which runs as follows :-

"Dr.(Mrs.) Manju Sagar, Laby Medical officer Dr. (Mrs) Manju Sagar , LMO in the Health Centre was sanctioned EOL for a period of six months w.e.f. 7.10.80, to enable her to accept an assignment in Libya. The period of leave was subsequently extended upto 5th December, 1981.

In terms of rules, Dr. (Mrs.) Manju Sagar could be sanctioned leave for a maximum period of 6 months for taking up employment outside the University. Dr. Mrs. Sagar, however, did not join her duty even after the expiry of extended period of leave. The V.C. passed orders that Dr. Sagar be deemed to have resigned her appointment at the University in terms of the rules of the University. An office order was accordingly issued on 31st Dec. 1981."

44. I agree with the contention raised by claimant that period for sanctioned leave is wrongly mentioned as 6 months instead of one year in the resolution Ex.WW1/5 but it is also found specifically mentioned in this resolution that her period of leave was subsequently extended upto 5.12.81. To my mind on the basis of facts and circumstances of this case it is difficult to conclude that if period of leave would have been mentioned as one year, in that scenario decision of Vice Chancellor and Executive Council would have been different. Predominant reason behind the decision taken by Vice Chancellor and Executive Council is non-resumption of duties by the claimant after the date of extended leave i.e. 5.12.81.

45. In view of the aforesaid reasons, I hold that claimant is not entitled to any relief as claimed by her. Reference is answered accordingly.

A copy of this award be sent to the appropriate government for its publication.

File be consigned to record room.

Dated: 7.3.09

(SANJAY GARG)
PRESIDING OFFICER :
LABOUR COURT-V:
DELHI.