**Neutral Citation No. - 2025:AHC-LKO:30708**

**Reserved** **AFR**

**Reserved on 15.05.2025**

**Delivered on 23.05.2025**

**Case :-** WRIT - A No. - 3653 of 2001

**Petitioner :-** Rajendra Prasad Tripathi
**Respondent :-** Hindustan Aeronautics Limited Through Chairman
**Counsel for Petitioner :-** Sampurnanand Shukla,Abhinav Nath Tripathi,Amrendra Nath Tripathi,Anurag Tyagi,D.K.Srivastava,S.K. Tripathi,Subodh Kumar Verma,Vishal Singh
**Counsel for Respondent :-** P K Sinha

**Hon'ble Brij Raj Singh, J.**

1. This writ petition has been filed seeking following reliefs:-

*"1. Wherefore, it is most respectfully prayed that Lordship may kindly be pleased to allow a writ in the nature of Certiorari quashing the order dated 26/28.02.1991 annexed as Annexure No.12 to the writ petition.*

*2. Wherefore, it is most respectfully prayed that our Lordship may kindly be pleased to issue a writ in the nature of mandamus commanding the opposite parties to allow the petitioner to join as Clerk-cum-Typist and further your Lordship may kindly be pleased to issue any other writ which this Hon'ble Court may deem fit an proper in the circumstances of the cases."*

2. The facts giving rise to the present writ petition are that petitioner was appointed on the post of Clerk-cum-Typist on 06.07.1982 and thereafter his services were confirmed on 26.05.1983. The petitioner fell ill in the month of October, 1990 and he sent several letters through Under Postal Certificate (not registered) to opposite party no.2 informing him that he was suffering from illness, therefore, he should be granted leave. It is said that petitioner has sent several letters on 10.12.1990, 16.06.1992, 26.04.1994, 28.01.1997, 02.01.1999 and 12.06.2001 through Under Postal Certificate (not registered) for necessary information. The petitioner remained absent as he was ill and he also submitted the fitness certificate dated 04.02.2000 issued by the Chief Medical Officer, Kanpur and the same was also sent through Under Postal Certificate (not registered). It has further stated that petitioner had given a representation for joining his service on 12.06.2001. When nothing was done, the petitioner filed

the present petition on 25.07.2001. Thereafter, by way of amendment, impugned termination order dated 26/28.02.1991 has been challenged.

3. Learned counsel for the petitioner has submitted that in view of Clause-19(ii) read with Clause-26 of the Certified Standing Orders of Hindustan Aeronautics Limited (for short "Standing Orders") the answering opposite party has to follow the procedure and the penalty for major punishment could have been passed only after following the due procedure by doing a detailed enquiry. He has further submitted that in the present case, without initiating regular proceedings, name of the petitioner has been struck off from the roll of the organisation in view of Clause-19(ii) of the Sanding Orders. It has been submitted that Clause-3 of the Standing Orders indicates that workmen of the companies are classified in six categories and the petitioner is a permanent workman. Clause-19(i) of the Standing Orders indicates that service of a permanent workman may be terminated by either party giving to the other a notice of three months in writing or paying equivalent wage/salary in lieu of notice, whereas Clause-19(ii) of the Standing Orders indicates that if a workman remains absent unauthorisedly for more than 10 days and absents himself beyond a period of leave originally granted or subsequently extended, he shall be deemed to have lost his lien on his appointment, unless he returns.

4. Learned counsel for the petitioner has further submitted that management has wrongly taken resort to Clause-19(ii) of the Standing Orders in respect of the petitioner as the said provision is pertaining to workman, whereas the petitioner is a permanent workman, therefore, the aforesaid Clause will not be applicable in the case of the petitioner. In support of his contention, learned counsel for the petitioner has relied upon the following judgements:-

1. ***Chandu Lal Vs. Management of M/s Pan American World Airways Inc.***, (1985) 2 SCC 727;

2. ***Jai Shanker Vs. State of Rajasthan,*** (1966) 1 SCR 825:AIR 1966 SC 492;

3. ***Deokinandan Prasad Vs. State of Bihar and others***, (1971) 2 SCC 30;

4. ***The State of Assam and others Vs. Akshaya Kumar Deb***, (1975) 4 SCC 339; and

5. ***Special Appeal No.18 of 2006, State of U.P. and others Vs. Yamuna Prasad Rai***, decided on 12.01.2006.

5. On the other hand, Sri P.K. Sinha, learned counsel for the opposite parties has taken a preliminary objection that writ petition is highly barred by laches because the impugned order was issued on 26/28.02.1991, whereas the writ petition has been filed on 25.07.2001 i.e. after more than ten years without any plausible explanation. Whatever reasons have been given by the petitioner are totally untenable for the reason that petitioner has annexed several receipts of Under Postal Certificate, which are totally waste papers. The petitioner has not stated anywhere in the writ petition that any registered representation/document was sent to the answering opposite party or any application was served through proper mode in the office of the answering opposite party. The proof of receipt of Under Postal Certificate is a document which cannot be relied upon for the reason that it has no evidentiary value. It has further been submitted that the sanctioned letter as has been annexed as Annexure-3 to the writ petition is not available on record of the department. It is also not intangible as to for what purpose the alleged sanctioned letter was dispatched by Under Postal Certificate on 04.0.1990 by the petitioner. The said letter does not indicate any signature of the competent authority nor there is any signature of Sri H.S. Narang and Sri K.L. Nagar, Manager (Stores) where the petitioner was working. It appears that petitioner fabricated the proforma without any signature of the competent authority. Sri K.L. Nagar, Manager (Stores) has indicated

vide Letter No.C/417/COMML.Stores/90 dated 2.10.1990 that Sri R.P. Tripathi (petitioner) is absent from 01.10.1990 and he has not reported on duty till date nor any information has been received by the department. On the basis of the report of Sri K.L. Nagar, Manager (Stores), Sri H.S. Narang wrote letter to the Chief Manager (P & A) on 22.10.1990 that petitioner is absenting from duty since 01.10.1990 without any information, as such the petitioner has lost his lien on the post and action to terminate his services may be taken immediately.

6. Learned counsel for the opposite parties has further submitted that since the petitioner was absent from duty, the matter went to the level of the General Manager of the Unit. The note sheet of the office of the General Manager indicates that petitioner did not submit any application nor any information was sent for his absence w.e.f. 01.10.1990. The petitioner did not give any application for leave in any manner. The petitioner was informed by the Manager (Personnel) vide telegram dated 25.10.1990 that he is absenting unauthorisedly and his services will be terminated. Chief Manager (P & A) sent notice on 03.11.1990 to the petitioner to show cause within eight days as to why he is absenting from duty and in case his explanation is not being found satisfactory, his name will be struck off from the roll of the organization. Again, the petitioner was communicated vide letter dated 21.11.1990 though Registered Post for necessary action and calling explanation, which was received by the petitioner and copy of the acknowledgment of the petitioner has been filed as Annexure-6 to the counter affidavit. In spite of receiving the letter dated 21.11.1990, the petitioner never submitted any explanation. Thereafter, the petitioner was communicated vide letter dated 01.12.1990 through Registered Post that he has lost his lien in view of his unauthorised absence from duty w.e.f. 01.10.1990. All the communications were sent on the official residential address of the petitioner, which was available at the establishment section of the department. The petitioner was again communicated vide letter dated 20.12.1990.

However, letter dated 01.12.1990 which was communicated to the petitioner, was returned with the endorsement that petitioner has left the house and gone elsewhere. When the petitioner did not respond, finally on 26/28.02.1991 name of the petitioner has been struck off from the roll of the organisation along with postal endorsement.

7. Learned counsel for the opposite parties has further submitted that the answering opposite party has struck off the name of the petitioner from the roll of the organisation by resorting the provisions of Clause-19(ii) of the Standing Orders. He has also submitted that in Clause-3 of the Standing Orders, it is provided that there are six categories of workmen and admittedly the petitioner was a workman. It has been submitted that provisions of Clause-19(ii) of the Standing Orders have been discussed and upheld by this Court in various judgments and if a workman is absent unauthorisedly for more than ten days, then minimum requirement is to give show cause notice, which was adhered by the management in the present case and after issuing show cause notice, name of the petitioner was struck off form the roll of the organisation. He has also submitted that management had choice of two procedures i.e. either the management could have issued charge sheet by following the procedure envisaged under Clauses-26 and 27 or the procedure prescribed under Clause-19(ii) of the Standings Orders. In the present case, the petitioner was given a show cause notice, to which he did not turn up, therefore, by applying the provisions of Clause-19(ii) of the Standing orders, his name was struck off from the roll of the organisation. In support of his contention, learned counsel for the opposite parties has relied upon the following judgments:-

1. ***National Engineering Industries Limited, Jaipur Vs. Hanuman***, AIR 1968 SC 33;

2. ***Buckingham and Carnatic Company Limited Vs. Venkatiah and another***, AIR 1964 SC 1272;

3. ***Bharat Heavy Electrical Limited Vs. Labour Court, U.P. at Meerut and others***, (1999) 3 UPLBEC 2098;

4. ***Hindustan Paper Corporation Vs. Purnendu Chakrobarty and others***, (1996) 11 SCC 404; and

5. ***Scooters India and others Vs. Vijai E.V. Eldred***, (1998) 6 SCC 549.

8. Heard Sri Amrendra Nath Tripathi, learned counsel for the petitioner, Sri P.K. Sinha, learned counsel appearing for the Hindustan Aeronautics Limited and perused the record.

9. Learned counsel for the petitioner has submitted that management has adopted the provisions of Clause-19(ii) of the Standing Orders, which is not applicable for the reason that petitioner is a permanent workman, therefore, Clause-26 read with Clause-27 of the Standing Orders could have been resorted and the punishment could have been awarded after following the procedure mentioned therein. For the sake of convenience, Clause-19 of the Standing Orders is quoted below:-

> *"**19. Termination of Employment:***
>
> *(i) Service of a permanent workman may be terminated by either party giving to the other a notice of three months in writing or paying equivalent wage/salary in lieu of notice.*
>
> *(ii) If a workman remains absent unauthorisedly for more than 10 days and absents himself beyond a period of leave originally granted or subsequently extended, he shall be deemed to have lost his lien on his appointment, unless he returns**;***
>
> *(a) within eight days from the date of his losing lien and*
>
> *(b) explains to the satisfaction of the Manager the reasons for his unauthorised absence.*
>
> *In case a workman loses his lien on his appointment, he shall be entitled to be kept on "Badli List".*
>
> *(iii) If a workman leaves before the expiry of the period of notice of termination by the company he will be paid only for the period he actually works. If a workman does not report for work after giving notice of his intention to resign, or reports for duty for a few days and stays away without serving the full notice period, he will be treated as a workman leaving without notice and an amount equivalent to his salary/wages for the unexpired period of notice shall be recovered from his final dues.*
>
> *(iv) If a workman gives notice of his intention to resign, the Manger/Management may accept the resignation and release him at*

> *once or at any time before the date of expiry of the notice period in which case he will be paid only for the period he actually works.*
>
> *(v) The services of probationary, temporary. substitute and casual workmen may be terminated without giving any notice or payment of compensation in lieu thereof, but the services of temporary and probationary workman shall not be terminated as al punishment unless he has been given an opportunity of explaining the charges levelled against him in the manner prescribed in clause 29 of these Standing Orders."*

10. Clauses 26 and 27 of the Standing Orders will not be applicable in the present case for the reason that management had resorted the provisions of Clause-19(ii) of the Standing Orders as the said provision is applicable to the workmen. The petitioner is a workman as per Clause-3 of the Standing Orders, which comprises six categories of the workmen. Clause-19(ii) of the Standing Orders does not indicate that it will be applicable for workman pertaining to any category out of the six categories of Clause-3.

11. Learned counsel for the petitioner has relied upon the judgement rendered in the case of ***Chandu Lal*** (supra) particularly on paragraph-8 of the aforesaid judgement, which is quoted below:-

> *"8. It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion it is not necessary to support our conclusion by reference to precedents or textual opinion as a common-sense assessment of the matter is sufficient to dispose of this aspect. 'Retrenchment' is defined in Section 2 (oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained."*

12. In the aforesaid judgement, the subject matter is loss of confidence regarding stigma attached to the workman and the Hon'ble

Supreme Court has held that services were terminated on the basis of loss of confidence and termination of service by the employer was punishment and it was found that attaching stigma to the appellant was certainly to be enquired by adopting the disciplinary proceedings. The ratio of the aforesaid case is not applicable to the present case for the reason that management has resorted the provisions of Clause-19(ii) of the Standing Orders and minimum opportunity was provided to the petitioner by issuing show cause notice to him.

13. Learned counsel for the petitioner has also relied upon the paragraphs 13, 17 and 20 of the judgement of the Hon'ble Supreme Court rendered in the case of ***Akshaya Kumar Deb*** (supra) and has submitted that in view of Article 311 (2) of the Constitution of India, the petitioner is entitled to be heard. In the said case, the employee/workman reported for duty and produced a medical certificate of fitness issued by a Civil Surgeon, but he was not assigned the duty. He continued to attend the office till September 13, 1956 when he was informed that operation of the order dated August 28, 1956 of the Government had been suspended. In the present case, it is admitted on record that petitioner was absent unauthorisedly and did not report to the management. Therefore, the management proceeded against him in view of Clause-19(ii) of the Standing Orders, which is a statutory requirement and after following due procedure, name of the petitioner was struck off from the roll of the organisation.

14. Learned counsel for the petitioner has also relied upon paragraph-24 of the judgement of the Hon'ble Supreme Court rendered in the case of ***Deokinandan Prasad*** (supra) and has submitted that in view of Article 311 of the Constitution of India, the petitioner is entitled to be heard. Paragraph-24 itself speaks that no show cause notice was given to the employee, whereas in the present case, show cause notice has been issued to the petitioner and thereafter many reminders have been issued and thereafter the management by following the

procedure as envisaged under Clause-19(ii) of the Standing Orders, struck off the name of the petitioner from the roll of the organisation. Therefore, the aforesaid judgement is also not applicable in the present case.

15. Hon'ble the Supreme Court in the case of ***National Engineering Industries Limited, Jaipur*** (supra) has held that out of the two procedures available to the management, one can be resorted to by it to take action against the employee. Paragraph 13 of the aforesaid judgement is extracted herein below:-

> *"13. It is however urged that some difference is made by the existence of another provision in the Standing Orders. In Appendix 'D' of the Standing Orders one of the Major Misdemeanours is "absence without permission exceeding ten consecutive days." That in our opinion is an alternative provision and the appellant in this case was free to resort to any one of the provisions, unless it is shown that resort to one particular provision was due to mala. fide. This is not the case of the respondent here. In the circumstances the earlier standing order in Section G must be held to have full force and effect and Hanuman respondent's service stood automatically terminated when he did not appear within 8 days of the expiry of his leave which was on April 9, 1965."*

16. Hon'ble the Supreme Court in the case of ***Buckingham and Carnatic Company Limited*** (supra) has held that where parties agree upon the terms and conditions of service and they are included in certified standing orders, the doctrine of common law or considerations of equity would not be relevant. Paragraph-5 of the aforesaid judgement is extracted herein below:-

> *"5. Mr. Sastri for the appellant contends that the case of Venkatiah falls squarely within the provisions of Standing Order 8(ii) and the High Court was in error in holding that the decision of the appellant in refusing to condone the absence of Venkatiah was either unfair or improper, or that it contravened the provisions of S. 73 of the Act. Let us first examine Standing Order No. 8(ii) before proceeding any further. The said Standing Order reads thus:*
>
> *"Absent without Leave: Any employee who absents himself for eight consecutive working days without Leave shall be deemed to have left the Company's service without notice thereby terminating his contract of service. If he gives an explanation to the satisfaction of the management, the absence shall be converted into leave without pay or dearness allowance. Any employee leaving the Company's service in this manner shall have no claim for re- employment in the Mills.*

> *But if the absence is proved to the satisfaction of the Management to be one due to sickness, then such absence shall be converted into medical leave for such period as the employee is eligible with the permissible allowances."*
>
> *This Standing Order is a part of the certified Standing Orders which had been revised by an arbitration award between the parties in 1957. The relevant clause clearly means that if an employee falls within the mischief of its first part, it follows that the defaulting employee has terminated his contract of service. The first provision in clause (ii) proceeds on the basis that absence for eight consecutive days without leave will lead to the inference that the absentee workman intended to terminate his contract of service. The certified Standing Orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service. It is true 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. But where parties agree upon the terms & conditions of service and they are included in certified Standing Orders, the doctrines of common law or considerations of equity would not be relevant. It is then a matter of construing the relevant term itself. Therefore, the, first part of Standing Order 8(ii) inevitably leads to the conclusion that if an employee is absent for eight consecutive days without leave, he is deemed to have terminated his contract of service and thus relinquished or abandoned his employment."*

17. In the case of ***Bharat Heavy Electrical Limited*** (supra), this Court has held that the cases of 'abandonment' are different from the cases of 'termination of service' for the reason that in the matter of abandonment it is the sweet will of employee, whereas in case of termination, it is the will of the employer which is imposed on the employee. The present case is fit in the terminology of "abandonment" and the same cannot be treated as termination. Paragraphs-10, 12 and 13 of the aforesaid judgement are extracted herein below:-

> *"10. The Supreme Court dealt with similar standing order for the first time in the Buckingham case, where the Court observed, the relevant clause clearly means that if an employee falls within the mischief of its first part, it follows that the defaulting employee has terminated his contract of service. The first provision in clause (ii) proceeds on the basis that absence for eight consecutive days without leave will lead to the inference that the absentee workman intended to terminate his contract of service. It is true that under*

> *common law an inference that an employee has abandoned or relinquished service is not easily drawn. 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. But where parties agree upon the terms and conditions of service and they are included in certified Standing Orders, the doctrines of common law or considerations of equity would not be relevant. It is then a matter of construing the relevant term itself. Therefore, the first part of Standing Order 8 (ii) inevitably leads to the conclusion that if an employee is absent for eight consecutive days without leave, he is deemed to have terminated his contract of service and thus relinquished or abandoned his employment.*
>
> *12. What is the effect of abandonment? What does it mean? Black's Law dictionary defines abandonment to mean; Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it. It further says that abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, while abandonment is a voluntary relinquish/Rent through non-user. The abandonment is a kind of voluntary retirement by an employee. It comes within the exception of sub-clause (a) of Section 2 (oo) and is not a retrenchment. Another single Judge of this Court has also taken similar view.*
>
> *No positive action is required from the employer side*
>
> *13. Let's look at it from different angle. Retrenchment requires some positive action on behalf of the employer. But if nothing is to be done by the employer and the services are automatically terminated in pursuance of a standing order or the action is deemed to be taken by the employee, then there cannot be any retrenchment. The Supreme Court in the Buckingham case, while dealing whether there was any violation of Section 73 of the Employees State insurance Act held, where termination of the employee's services follows automatically either from a contract or from a standing order by virtue of the employee's absence without leave for the specified period, such termination is not the result of any positive act or order on the part of the employer, and so, to such a termination the prohibition contained in Section 73(1) would be inapplicable."*

18. Hon'ble Supreme Court in the case of ***Hindustan Paper Corporation*** (supra) in paragraph-12 of the judgment has held that before taking action under the said clause, opportunity should be given to the employee to show cause against the action proposed and if cause shown by the employee is good and acceptable, it follows that no action in terms of the said clause is to be taken. Thus, the law has been settled by the Hon'ble Supreme Court since 1964 from the case of ***Buckingham and Carnatic Company Limited*** (supra), wherein it is provided that in case of loss of lien, it has fossilised to the effect that though the principles of equity considerations are not applicable in the

case of specific Certified Standing Order where parties have agreed to the terms/contract to the end point that compliance of the principles of natural justice is required to be followed. As such, in view of the law laid down by the Hon'b101le Supreme Court in the present case, at least a notice has to be given to the employee towards compliance of the principles of natural justice though no regular disciplinary enquiry may be required even if the same is provided in the service rules, which procedure has been adopted and complied with in the present case. Paragraphs-11 and 12 of the aforesaid judgement are extracted herein below:-

> *"11. Mr. P.P. Rao, Senior Counsel appearing for the appellant-Corporation fairly, in our view rightly, conceded that the Rule, namely, Rule 23 (iv)(E) has to be construed by reading into it the principles of natural justice, otherwise by reading it literally, it would amount to arbitrary and unreasonable vesting of authority and liable to be struck down. According to the learned counsel, if only the first respondent had properly responded to the show-cause notice the Corporation might not have taken the extreme step of cutting off the lien of the appointment of the first respondent with the Corporation.*
>
> *12. We consider that in view of this concession made by the learned counsel on behalf of the appellant-Corporation that the said Rule must be read and given effect to, subject to the compliance of the principles of natural justice, it cannot be said that the Rule is arbitrary or unreasonable or ultra vires Article 14 of the Constitution. In other words, before taking action under the said clause, an opportunity should be given to the employee to show cause against the action proposed and if the cause shown by the employee is good and acceptable, it follows that no action in terms of the said clause is either unreasonable or violative of Article 16 of the Constitution."*

19. Hon'ble Supreme Court while laying down the law on the issue in question, has also considered the judgement rendered in the case of ***D.K. Yadav Vs. J.M.A. Industries Limited,*** (1993) 3 SCC 259 and other cases of similar nature and has observed that appellant-Corporation was right in passing the order by taking the resort of giving show cause and passing the order for strucking off the name of an employee and also observed that no disciplinary enquiry was required for the same.

20. The issue of following the minimum principles of natural justice was considered by this Court in Writ Petition No.883 (SS) of 1993, Rajesh Kumar Vs. Hindustan Aeronautics Limited, decided on 06.04.1993, in which it was held that the Standing Orders of Hindustan Aeronautics Limited issued regarding loss of lien is violative of principles of natural justice, arbitrary and discriminatory and hit by Section 23 of the Indian Contract Act. The said judgement of learned Single Judge was challenged by way of Special Appeal No.87 of 1993 and this Court allowed the special appeal by observing that the Standing Orders cannot be said to be bad in the eyes of law and while making it applicability, the principles of natural justice have to be followed. Relevant portion of the judgement passed in the aforesaid special appeal is quoted below:-

> *"The aforesaid Standing Orders, therefore, cannot be said to be bad in law but while making its applicability, the principles of natural justice have to be followed.*
>
> *The argument of the learned counsel for the respondent is that the notice was issued to the respondent does not flow from the order itself, which simply quotes the aforesaid Para and terminates the services of the respondent. The finding recorded in this regard by the learned Single Judge does not call for any interference.*
>
> *On merits of the claim, we may also put on record that the respondent, who remained absent for less than one month and had been serving in the industry since 1975 and has also been allowed to continue by an interim order of this court is likely to reach the age of superannuation and, therefore, also we do not find any reason to interfere with the order passed by the learned Single Judge.*
>
> *Subject to the aforesaid finding with respect to Para 21(ii) of the Certified Standing Orders, the rest of the judgment passed by the learned Single Judge is upheld. The special appeal has no force, which is hereby dismissed."*

21. Learned counsel for the petitioner by placing reliance on various case laws tried to justify that petitioner had sent various representations on 10.12.1990, 16.06.1992, 26.04.1994, 28.01.1997, 02.01.1999 and 12.06.2001 through Under Postal Certificate (not registered) to espouse his cause to the competent authority for his absence from duty. This approach of the petitioner cannot be appreciated as neither registered document was sent to the answering opposite party nor any application was served through proper mode in

the office of the answering opposite party. The proof of receipt of Under Postal Certificate is a document which cannot be relied upon and no reliance can be paced on such document as it has no evidentiary value as has been held by the Hon'be Supreme Court in the case of ***Shiv Kumar and others Vs. State of Haryana and others,*** (1994) 4 SCC 445.

22. Hon'ble Supreme Court in the case of ***Shiv Kumar and others*** (supra) in paragraph-6 of the judgement has clearly disbelieved the postal certificate produced before it and found that it is not difficult to get such postal seals at any point of time. As such the postal certificate is not a reliable means of dispatching the medical certificate particularly when none of them have been received by the department. Paragraph-6 of the aforesaid judgement is extracted herein below:-

> *"6. We have not felt safe to decide the controversy at hand on the basis of the certificates produced before us, as it is not difficult to get such postal seals at any point of time. To assure our mind that the notices had really been sent out to the concerned workmen, we perused the application which had been filed by the management seeking permission. We did so because Rule 76A (2) requires that the application shall be made in triplicate and copies of the same shall be served by the employer on the workmen concerned and "proof to that effect shall also be submitted by the employer along with the application." But the application (Annexure A) has not mentioned anything about "proof of service to the workmen concerned. The statement in the counter-affidavit that proof of service had been submitted to the Specified Authority has not satisfied our mind in this regard."*

23. So far the question of laches in filing the writ petition is concerned, it is the admitted position that writ petition was filed on 25.07.2001, whereas the impugned termination order was passed on 26/28.02.1991, thus the writ petition is highly belated and suffers from laches. No plausible explanation has come forward from the petitioner for such a long and inordinate delay in filing the writ petition. Hon'ble Supreme Court in the case of ***Scooters India and others*** (supra) has considered the issue of laches in filing the writ petition and directly entertaining the writ petition for adjudication of industrial dispute involving the termination of service passed on disputed question of facts. The question of delay has been considered

in the aforesaid case and six years delay in filing the writ petition has ben deprecated by the Hon'ble Supreme Court. Paragraph-2 of the aforesaid judgement is extracted herein below:-

> *"2. The above facts alone are sufficient to indicate that there was no occasion for the High Court to entertain the writ petition directly for adjudication of an industrial dispute involving the termination of disputed questions of fact for which remedy under the industrial laws was available to the workman. That apart, the writ petition was filed more than 6 years after the date on which the cause of action is said to have arisen and there being no cogent explanation for the delay, the writ petition should have been dismissed on the ground of laches alone. It is also extraordinary for the High Court to have held Clause 9.3.12 of the standing orders as invalid. Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside the High Court's judgment, we need not deal with this aspect in detail."*

24. After recording the findings on the basis of facts and law, this Court does not find any good ground on merit to interfere in the impugned order as the same has been passed after following the due procedure as envisaged in the Standing Orders. The petitioner was sleeping over the matter for over ten years, therefore, the writ petition deserves to be dismissed on the ground of laches also.

25. Writ petition is accordingly ***Dismissed.***

26. No order as to costs.

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**(Brij Raj Singh, J.)**

**Order Date :-** 23rd May, 2025
Rao/-