राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 29 नवम्बर, 2025 / 08 मार्गशीर्ष, 1947

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, the 8th October, 2025

No. LEP-E/1/2024.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor, Himachal Pradesh is pleased to order the publication of awards

of the following cases announced by the **Presiding Judge, Labour Court**-cum-**Industrial Tribunal, Dharamshala, H.P.** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette".—**

Sl. No.	Ref./ No.	Petitioner	Respondent	Date of Award/Order
1.	06/20	Sunil Kumar	C.M.D. Divya Himachal Prakashan	04-08-2025
2.	18/18	Guddi Devi	The E.E. HPPWD, Dharampur	27-08-2025
3.	551/16	Ravinder Aggarwal	M.D. M/s Amar Ujjala	27-08-2025
4.	118/17	Jagdish Chand	M/s GVK	28-08-2025
5.	93/23	Kush Kumar Jaswal	M.D. Employer Hi Tech Satluj Motors	28-08-2025
6.	05/24	Jiwa Ram	-do-	-do-
7.	103/21	Pawan Kumar	E.E. Jal Shakti Vibhag Dharamshala & other	28-08-2025
8.	84/22	Maya Devi	S.E. HPSEBL, Rakkar	28-08-2025
9.	67/22	Jyoti Devi	B.M.O. Jawalamukhi	28-08-2025
10.	90/22	Sumeet Kumar Bhatia	Principal, Govt. Degree College Dharamshala & other.	28-08-2025
11.	70/21	Avtar Singh	Manager Deepak Fasterner Ltd.	30-08-2025
12.	69/21	Ajay Kumar	-do-	-do-
13.	71/21	Surinder Kumar	-do-	-do-
14.	70/18	Amit Sharma	M/S Inox Wind	30-08-2025

By order,

Sd/-
PRIYANKA BASU INGTY, IAS
Secretary (Lab. Emp. & O.P.).

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 06/2020

Date of Institution : 21.01.2020

Date of Decision : 04.8.2025

Shri Sunil Kumar s/o Shri Roshan Lal, r/o Village Abdulapur, P.O. Jamanabad, Tehsil and District Kangra, H.P. . . *Petitioner*.

Versus

M/s Divya Himachal Prakashan Pvt. Ltd., through its CMD, Head Office at Kangra-Pathankot Marg, Old Mataur, Tehsil & District Kangra, H.P. . . *Respondent*.

Reference under Section 7 of the Industrial Disputes Act, 1947 (14 of 1947)

For the Petitioner : Sh. Ravinder Aggarwal, Ld. AR

For Respondent : Sh. N.L. Kaundal, Ld. AR and Sh. Vijay Kaundal, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Labour Officer Dharamshala:—

> "Whether the claim submitted by Sh. Sunil Kumar s/o Sh. Roshan Lal, r/o Village Abdullapur, P.O. Jamanabad, Tehsil and District Kangra, H.P. under Section 17 (1) of Working Journalists and Other News Paper Employees (Conditions to Service) and Miscellaneous Provisions Act, 1955 amounting to Rs. 23,46,985.00 is legal and justified. If not what amount of benefit of claim the above worker is entitled to from the above Employer".

2. The brief facts of the claim are that the claimant was employed by the management of M/s Divya Himachal Prakashan Private Limited as a Mali (Gardener) from January, 2011 in Admin. Department without any appointment letter. It is further submitted that the services of the claimant were confirmed w.e.f. 1.11.2011 and he (claimant) was deputed to work in Head Office of respondent/management situated at Kangra-Pathankot Marg, Old Mataur, Tehsil & District Kangra H.P. It is asserted that salary of applicant/claimant was paid on cash voucher by the respondent/management and provident fund of applicant/claimant was not deducted by them. The salary slip of February, 2012 was issued by the authorized signatory of respondent. It is asserted that list of 367 employees of Divya Himachal Prakashan Private Ltd. prepared by HR department of respondent/management and provided by Sr. Engineer (IT) of the respondent Shri Rahul Choudhary, the name of applicant/claimant included in serial no.23 of the above list with other details. The wages and service conditions of the applicant/workman are governed by The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as 'the Governing Act), enacted by the Parliament and the management/respondent is covered under the Governing Act. The applicant/claimant falls under Section 2(c) and 2(dd) of the Governing Act as a non-journalists employees of the newspaper establishment as well as the applicant/claimant was a workman within meaning of Section 2(s) of the Industrial Disputes Act. It is submitted that in terms of Governing Act the applicant was entitled to the wage as recommended by Wage Board instituted by the Government of India, Ministry of Labour and Employment. The recommendations of Majithia Wage Board were accepted by the union Government *vide* its Notification dated 11.11.2011. The Hon'ble Supreme Court delivered the judgment reported as ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors, AIR 2014 SC 1228 dismissing all the writ petitions filed against the wage board and its award. The Hon'ble Apex Court has further directed all the newspaper establishments covered by the award of the wage board to implement the same and pay the arrears in four equal instalments to its employee within one year from date of its judgment. It is alleged that the management of respondent did not implement the recommendations of wage board as confirmed by the Hon'ble Supreme Apex Court in terms of provisions of Section 13 of the governing Act. The wages paid to the newspaper employees could not be less than the recommendations of the wage board as accepted by the Government. Being aggrieved by non implementation of Majithia Wage Board recommendations

the employees of various newspaper establishments of all over India had filed contempt petitions before the Hon'ble Supreme Court. Thereafter Hon'ble Supreme Court vide its judgment dated 19.6.2017 has held that the managements have one more opportunity to implement the recommendations of Majithia Wage Board. The applicant was not paid his dues and wages accruing under the wage board notification as well as the management did not comply with the judgments/orders/directions of Hon'ble Supreme Court and remained disobeying them. It is asserted that the Hon'ble Supreme Court had directed the Labour Courts to decide all cases before them in relation to Majithia Wage Board within a period of six months. It is further asserted that the Hon'ble High Court of Himachal Pradesh also relied on the time bound orders of Hon'ble Supreme Court. The respondent/management is a corporate body owned a single title daily newspaper called 'Divya Himachal' and same is purchased and printed by the same persons/management by way of its three publication centers at Dharamshala, Shimla and Chandigarh. It is asserted that the applicant/claimant had worked as Mali (Gardener) with the respondent/management and as per recommendations of Majithia Wage Board his job profile falls within the category of administrative staff. It is asserted that the basic of applicant before implementation of Majithia Wage Board i.e. 1.11.2011 as Rs.3560/- and in terms of para 11 and Table III of Manisana Wage Board Award dearness allowance is being Rs. 5156/- and now for calculation of new basic as per Majithia Wage Board recommendations existing emoluments ought to be Rs. 9801/-. It is submitted that respondent/management owed a sum of Rs. 24,15,037/- on account of unpaid entitled dues of difference of wages and allowances from 11.11.2011 to 15.5.2018 along with 12% compounded interest (claimed from 1.4.2015 till 31.12.2019 to the applicant/claimant. The claimant/applicant has prayed that his claim be allowed in terms of his revised claim of Rs. 24,15,037/-.

3. In reply to the claim preliminary objections qua maintainability of the claim directly before this court, jurisdiction, denial of employer employee relationship, application being abuse process of law etc. have been raised. On merits, it has asserted that the averments made in the application are wrong and not admitted. In-fact the services of the claimant/workman were engaged by the Managing Director of the company for his residence for personal domestic work. The management of the company has denied that it has no role in the engagement of the claimant who was working with the Managing Director at his residence. It is asserted that the claimant was merely a personal servant hired by Managing Director who was paid honorarium out of his own pocket. In the light of this application it is asserted that there does not exist employer and employee relationship between the respondent and the claimant. It is further asserted that the claimant is not employee/workman within the definition of Section 2(dd) of the Governing Act. Neither he falls within the definition of workman under Section 2(s) of the Industrial Disputes Act. It is denied that there is functional integrity and common control in the management of M/s Divya Himachal Prakashan Pvt. Ltd. and M/s Samarpan Printers. It is submitted that the Divya Himachal Prakashan Pvt. Ltd. and Samarpan Printers are two different establishment having different registration number, EPF code number, PAN Number, GST number etc. It is asserted that Majithia Wage Board recommendations is not applicable to personal domestic servant. It is asserted that the applicant/claimant has not raised any dispute with regard to compliance of Majithia Wage Board recommendaionts w.e.f. November, 2011 till date. He has filed an application dated 23.4.2018 after lapse of about 8 years from the date of publication before designated authority under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. It is alleged that applicant/claimant was never engaged by the respondent as Mali but he was engaged by CMD of the company at his residence for personal work and there was no role of the company for the same. The CMD had paid remuneration to the applicant from his own pocket hence the applicant/claimant did not fall within the category of administrative staff and he is not entitled for any benefits under the Majithia Wage Board recommendations. It is submitted that the applicant/claimant was a domestic servant of CMD of the company hence the provisions of Manisana Wage Board and Majithia Wage Board is not applicable to him. Since the applicant/claimant was domestic servant of CMD of company the question of paying wages and

emoluments to him in terms of Majithia Wage Board recommendations did not arise at all. Other averments made in the petition were denied and it is prayed that claim of petitioner is not maintainable and it may be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the petitioner is entitled to arrears amounting to Rs. 23,46,985/- from the respondent under Section 17(1) of the Working Journalists and Other Newspaper Employees and Miscellaneous Provisions Act,1955, is legal and justified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to amount of benefits the petitioner is entitled from the above employer, as claimed? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . . *OPR*.

4 Whether this Court has no jurisdiction to try the present petition, as alleged? . .*OPR*.

5. Whether there is no relationship of master & servant between the petitioner and respondent, as alleged? . . *OPR*.

6. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged? . *OPR*.

Relief

6. The petitioner in order to prove his case has examined Shri Anirudh Thakur, Sr. Assistant, Labour Court-cum-Industrial Tribunal Kangra at Dharamshala as PW1 who stated on oath that he could not produce the original record of Reference no.103/2019 as per office record the file of above mentioned case has been sent to Hon'ble High Court of H.P. It stated that the certified copy of Award passed by this court in Reference no.103/2019 decided on 31.7.2024 was issued by this Court which is Ext. PW1/A. He stated that he brought record of Reference No.208/2017. As per record the documents Ext. PW1/N (57 pages) has annexed with Reference no.208/2017 the similar documents has exhibited in this case which are Ext. PW1/B1 to B9. The petitioner has also examined Shri Ravinder Aggarwal s/o Late Sh. Ram Swaroop Aggarwal by way of affidavit Ext. PW2/A. He has also tender in evidence degree of MBHE Ext. PW2/B, notification dated 7.8.2000 Ext. PW2/C, identity cards Ext. PW2/D1 to D8, renewal of accreditation cards dated 2.9.2009 and 8.1.2010, 1.2.2013 Ext. PW2/E t Ext. PW2/G, fitment of basic and other allowances as per MWB on 11.11.2011 Ext. PW2/H and arrear calculation table Ext. PW2/J. The petitioner in order to prove his case has examined himself by way of affidavit Ext. PW3/A wherein he reiterated the facts alleged in the claim petition. He has also tender in evidence copy of salary slip February, 2012 Mark-X1, copy of list of employees of Divya Himachal Mark X2, copy of attendance sheet Mark-X3, copy of notification dated 24.10.2008 Ext. PW3/B, copy of notification dated 11.11.2011 Ext. PW3/C, copy of statement of Sh. Balwan Singh Ext. PW3/D, copy of notification dated 14.5.2019 Ext. PW3/E, certificate under Section 63 of BSA, 2023 Ext. PW3/F, copy of financial statement of Divya Himachal Prkashan Pvt. Ltd. for the financial year 2014-2015 Ext. PW3/G, copy of financial statement of Divya Himachal Prakashan Pvt. Ltd. for the financial year 2015-16 Ext. PW3/H.

7. The respondent in order to establish the case has examined Shri Hitesh Kotia, Manager (HR) of M/s Divya Himachal Prakashan Pvt. Ltd. District Kangra, H.P. who produced his affidavit Ext. RW1/A. In his affidavit he has reiterated the facts stated in the reply on behalf of the respondents. He has also produced on record copy of order of Hon'ble High Court Ext. RW1/B, copy of certificate 4.11.2021 Ext. RW1/C, copy of DDR dated 4.11.2021 Ext. RW1/D, auditor's report along-with balance sheets for the financial year 2007-08 Ext. RW1/E, copy of auditor's report along-with balance sheets for the financial year 2008-09 Ext. RW1/F, copy of auditor's report along with balance sheets for the financial year 2009-10 Ext. RW1/G and copy of certificate issued by CA Ext. RW1/H.

8. I have heard the learned Counsel/AR for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Yes
Issue No. 4	:	Yes
Issue No. 5	:	Redundant
Issue No. 6	:	Redundant
Relief	:	Claim petition is dismissed on account of the reference being bad in law.

REASONS FOR FINDINGS

Issues No. 3 and 4

10. Both the issues are being interconnected with each other shall be taken up together for the purpose of determination and adjudication.

11. The present claim was preferred against the management of M/s Divya Himachal Prakashan Pvt. Ltd. as the petitioner had claimed that he was appointed as Mali by the management on 11.1.2011. He had filed an application under Section 17 Clause 1 of the Governing Act for recovery of amount of Rs. 23,46,985/- as arrears of land revenue. The Labour Officer Dharamshala after scrutinizing the claim and objections raised on behalf of management concluded that the amount in question was not settled and the claim and the question of said amount was to be adjudicated by Labour Court as per Section 17 Clause 2 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. Thus Labour Officer on strength of notification No. Shram-(A) 4-17/11-L dated 18.10.2016 and assuming the powers under Sub-Section 1 of Section 17 of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 referred the question as to the amount due to this court. The facts on the basis of which claim was made are already illustrated by way of pleadings. On the preliminary objections raised in the reply on behalf of management is that the present reference made by designated authority is beyond its jurisdiction. It is submitted that as per notification dated 18.10.2016 the powers are assigned to

designate authority *i.e.* Labour Officer to deal with the application under Section 17 Clause 1 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 but not to exercise the powers to make reference under Section 17 Clause 2 of the Governing Act for purpose of adjudication. Learned counsel for the respondent has laid reliance on decision of five judges Bench of Hon'ble Apex Court in **M/s Kasturi and Sons (Private) Limited vs. Shri Salivatees Swaran and another, 1958 AIR SC 507** wherein it has been held by Hon'ble Supreme Court as follows:—

> *"Section 17 seems to correspond in substance to the provisions of s. 20, sub-s. (1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, which has now been repealed. Under this section, any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision. It is clear that the proceedings under s. 20, sub-s. (1) could commence only if and after the workman had obtained an award or decision in his favour. We are inclined to think that the position under s. 17 is substantially similar. In this connection we may also refer to the provisions of s. 33C of the Industrial Disputes Act (14 of 1947). sub-s. (1) of s. 33C has been added by Act 36 of 1956 and is modelled on the provisions of s. 17 of the present Act. Section 33C, sub-s. (2), however, is more relevant for our purpose. Under s. 33C, sub-s. (2), where any workman is entitled to receive from his employer any benefit which is capable of being computed in terms of money, the amount at which such benefit may be computed may, subject to any rules made under this act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined should be recovered as provided for in sub-s. (1)".*

12. It is argued that the proceedings of Section 17 Clause 2 of Governing Act and Section 33 (c) (2) of the Industrial Disputes Act, 1947 are analogous to execution proceeding and executing court called upon to compute in terms of money the benefits claimed by a workman without final adjudication of entitlement. In such cases the said court in the position of executing court only and cannot adjudicate the question of entitlement or the amount due. Learned Counsel for petitioner has however argued that the above decision of the Hon'ble Supreme Court has become infructuous after amendment of Section 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 in the year 1962 which has been implemented *w.e.f.* 15.7.1963. The new amendment inserts that sub-sections in Section 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. It is argued that Section 17, Clause 2 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 is not analogue/pari-materia with the Section 33 (C) Clause (2) of the Industrial Disputes Act, 1947. It is also asserted that vide order dated 13.10.2017 in Miscellaneous Petition No.11857 of 2017 connected with Contempt Petition No.411 of 2014 had given directions to the labour courts that reference under Section 17, Clause 2 of the Working Journalist Act, 1955 is a reference for adjudication and same will be decided by labour court within six months from date of reference. The above discussion reveals that labour court to adjudicate reference under Section 17 Clause 2 of the Working Journalist Act, 1955 to determine the amount due in case between the claimant and newspaper establishment. Section 17 (2) of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 reads as follows:—

> *"If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement*

of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

13. As mentioned above respondent has raised an objection that reference is beyond the jurisdiction of the designated authority vide notification dated 18.10.2016. The notification of Labour and Employment department dated 18th October, 2016 is as follows:—

"*In exercise of powers conferred as sub-section (1) of section-17 of the Working Journalists and Other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955 (45 of 1955). The Governor, Himachal Pradesh is pleased to specify the Labour Officer of the Department of Labour and Employment, Himachal Pradesh as authority within their respective jurisdiction for the purpose of section-17 of the Act ibid, with immediate effect".*

14. Hon'ble High Court of Judicature at Bombay in case titled as **Head of Human Resource, Dainik Bhaskar Group (D.B. Corp. Ltd.) vs. Shri Dinesh Kumar Devidas Pardeshi in Writ Petition No.11646 of 2019** while deciding the same with other connected writ petitions has held in paras no.21, 22, 23, 24, 25 and 27 as follows:—

"21 Since the issue involved is about interpretation of provisions of Section 17 of the Act of 1955, it would be necessary to reproduce the said provision as under:

"17. Recovery of money due from an employer.—(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue. (2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law. (3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

22. Thus Section 17 of the Act of 1955 provides for a complete scheme for recovery of money due from the employer. In case there is no dispute about money payable, the State Government or the authority specified by it can straightaway issue a recovery certificate and the Collector can proceed to recover amount as arrears of land revenue. If there is a dispute about the amount payable, the State Government is required to make a Reference to the Labour Court under the provisions of sub-Section 2 of Section 17 of the Act of 1955 and it is the Labour Court which will decide the dispute and forward its decision to the State Government under sub-Section 3 of Section 17. Once the State Government receives the decision of the Labour Court

under Section 17(3), further proceedings of recovery are to be effected under sub-Section 1 of Section 17. This is the scheme of recovery provided for under Section 17 of the Act of 1955.

23. Careful reading of provisions of sub-Sections (1) and (2) of Section 17 of the Act of 1955 would indicate that while sub- Section (1) uses the words 'if the State Government or such authority, as the State Government may specify in this behalf, ...', the words used in sub-Section (2) are 'the State Government may'. These words 'or such authority as the State Government may specify in this behalf' are absent in sub-Section (2) of Section 17 of the Act of 1955.

24. This Court has considered and interpreted the provision of Section 17 of the Act of 1955 in All India Reporter Private Limited (supra). This Court held in paragraph nos.7 to 11 as under:

"7] A perusal of Section 17(1) of the Act of 1955 indicates that without prejudice to any other mode of recovery, it would be open for a newspaper employee to seek recovery of amount due to him by making an application to the State Government. On the State Government or such authority that the State Government may satisfy in this behalf being satisfied that any amount is so due, a certificate for such amount can be issued to the Collector who can then proceed to recover that amount in the same manner as an arrear of land revenue. It is clear from the said provision that the State Government has been conferred the power of delegating the task of determining whether any amount is due as claimed by a newspaper employee. The State Government can either itself or through such authority as specified issue a certificate as provided. In contrast, when the provisions of Section 17(2) of the Act of 1955 are analyzed, it becomes clear that no such power of delegation has been conferred on the State Government. Thus, if any question arises as to the amount due under the Act of 1955, it is for the State Government either on its own motion or on upon an application made to it to refer the question to any Labour Court as permitted. In other words, the State Government has not been conferred any power to delegate the task of referring such question to any Labour Court. There is thus a clear distinction contained in the provisions of Sections 17(1) and 17(2) of the Act of 1955 inasmuch as the power of delegation conferred on the State Government under Section 17(1) is missing in Section 17(2) of the Act of 1955. In this regard, the learned Counsel for the petitioner is justified in relying upon the decision in M. Chandru (supra) wherein the Hon'ble Supreme Court has observed in clear terms that delegation of power is permissible if there exists such provision in the Principal Act. The power to delegate being a statutory requirement must find place in the Principal Act itself. It is thus clear that in the absence of any such power of delegation being conferred upon the State Government under Section 17(2) of the Act of 1955 to refer any question as to whether any amount is due under the Act of 1955 to a newspaper employee, such reference has to be made by the State Government itself.

8] The Additional Commissioner of Labour has relied upon the notification dated 11/5/2016 issued by the Industries, Energy and Labour Department of the State Government and has thereafter made the order of reference. This notification states that the State Government has been pleased to allocate the work to refer the question to any Labour Court within the meaning of Section 17(2) of the Act of 1955 to the officers mentioned in Schedule thereto. We find that in the absence of any power of delegation being conferred on the State Government under Section 17(2) of the Act of 1955, the notification dated 11/5/2016 would not have any force of law. In the absence of any enabling power to delegate the task of referring any question to the Labour

Court, it would have to be held that exercise of such power by the officers mentioned in the Schedule to the notification dated 11/5/2016 would amount to usurping the authority conferred only on the State Government. The notification dated 11/5/2016 therefore does not have any statutory support of Section 17(2) of the Act of 1955. It is therefore held that it was not permissible for the Additional Commissioner of Labour to have referred the dispute to the Labour Court under Section 17(2) of the Act of 1955. Such reference under Section 17(2) ought to have been made by the State Government itself. Consequently, the Labour Court was not empowered to proceed further with the reference as made.

9] It was also submitted by the learned Counsel for the petitioner that since the members of the Union sought determination of their entitlement to higher wages, remedy under Section 17 of the Act of 1955 was not available. What was required to be resolved was an industrial dispute and therefore the members of the Union ought to have invoke appropriate jurisdiction in that regard. Reliance was placed on the decision in Sanjay Shalikram Ingle (supra). However, since it has been found that the Additional Commissioner of Labour was not empowered to make the reference under Section 17(2) of the Act of 1955 to the Labour Court, it would not be necessary at this stage to consider the said aspect of the matter. If a reference is made by the State Government under Section 17(2) of the Act of 1955, the said aspect can be considered at that stage.

10] It was urged by the learned Counsel for the Union that the challenge to the notification dated 11/5/2016 was raised belatedly since the present Writ Petition was filed on 16/9/2019. It is found that reference to the said notification has been made for the first time in the order of reference dated 23/7/2018. After the Additional Commissioner of Labour made the order of reference to the Labour Court, the petitioner raised a preliminary objection to the tenability of the reference proceedings on 17/1/2019. That objection came to be rejected on 8/8/2019. In these facts therefore it cannot be said that the challenge to the notification dated 11/5/2016 was belated. Needless to state that in addition to a challenge to the said notification, the order of reference dated 23/7/2018 as well as the order passed by the learned Judge, 4th Labour Court, Nagpur below Exh.11 on 8/8/2019 are also under challenge in this Writ Petition. We therefore do not find that the Writ Petition has been filed belatedly for it to be not entertained on merits.

11] Hence, for the aforesaid reasons, it is held that the notification dated 11/5/2016 issued by the State Government delegating its power under Section 17(2) of the Act of 1955 to the Additional Commissioner of Labour to make a reference to the Labour Court does not have any statutory support. There is no power conferred on the State Government to delegate the power conferred upon it to refer any dispute to the Labour Court for determining whether any amount is due to the members of the Union under the Act of 1955. Consequently, the notification dated 11/5/2016 is struck down as having been issued without there being any power conferred on the State Government in that regard under Section 17(2) of the Act of 1955. Consequently, the order dated 8/8/2019 passed below Exh.11 in Reference (IDA) No. 10/2018 is also set aside and it is declared that the said reference is not maintainable before the Labour Court in view of the notification dated 11/5/2016 being struck down. The Union is free to agitate its claim in accordance with law. It is clarified that this Court has not examined the claim on merits and all questions in that regard are kept open."

25. Thus in All India Reporter Private Limited (supra) this Court has held that power of delegation is not conferred on the State Government under sub-Section (2) of Section

17 of the Act of 1955 and that therefore, the Notification dated 11.05.2016 providing for such delegation has no force of law. This Court has struck down the Notification dated 11.05.2016. Since, it is held that the State Government cannot delegate the power of making Reference under sub-Section (2) of Section 17 of the Act of 1955, this Court has further proceeded to hold that the Reference made by Additional Commissioner of Labour in that case was not maintainable.

27. Faced with the above situation, the learned counsels appearing for respondent-employees have made strenuous efforts to distinguish the judgment in All India Reporter Private Limited (supra). Firstly, reliance is placed on the judgment of the Apex Court in Shri. Samarjit Ghosh (supra) in which it is held in paragraph no.6 as under:

"6. When all the provisions of s. 17 are considered together it is apparent that they constitute a single scheme. In simple terms the scheme is this. A newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due the Collector will recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due, it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government it is that State Government which will call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the reference, and thereafter the State Government will direct that recovery proceedings shall be taken. In other words the State Government before whom the application for recovery is made is the State Government which will refer the question as to the amount due to a Labour Court, and the Labour Court upon reaching its decision will forward the decision to the State Government, which will then direct recovery of the amount." Relying on Samarjit Ghosh (supra), it is contented that the provisions of Section 17 of the Act of 1955 are held to be constituting a 'single scheme'. In that judgment, the Apex Court has explained the scheme of Section 17 of the Act of 1955 and has not dealt with the issue as to whether the delegated authority can make Reference under Section 17(2) of the Act of 1955. In fact the Apex Court has also used the word 'State Government' for making Reference under Section 17(2) of the Act of 1955. Therefore, the judgment in Samarjit Ghosh (supra) is of no assistance to respondent-employees.

15. Learned Authorized representative for the petitioner has vehemently argued that Hon'ble Supreme Court in **Samarjit Ghosh vs. Bennet Coleman and Co. And others, (1987) 3 SCC 507** has laid down that all the provisions of Section 17 are considered together and constitute a single scheme. Thus Section 17 of the Governing Act has to be read as a whole. Consequently the notification of H.P. Government dated 18.10.2016 ensures that the State Government can delegate the powers to authority specified to deal with application under Section 17 and issue reference under Section 17 Clause 2 of the Governing Act.

16. Reliance has placed by the petitioner on findings of Hon'ble High Court of Allahabad which had observed in **The Indian Express Pvt. Ltd. vs. Union of India, Writ Petition No.292 of 2024** and other writ petitions disposed of by the same order in paras no.13,14,15 and paras no.34 and 37 as follows:—

"13. The State Government in exercise of its power under sub-section (1) of Section 17 of Act 1955 issued notification dated 12.11.2014 which was published in Official Gazette

specifying the "officers competent" to dispose of application made under Section 17 of Act 1955.

14. *In Pradhan Prabandhank/Unit Head M/s. Amar Ujala vs. State of U.P. and others, 2018 (7) ADJ 715, the dispute arose as to competence of Deputy Labour Commissioner referring a dispute under Section 17(2) of Act 1955 to Labour Court. This Court found that State was competent to delegate power for reference as it was an administrative Act. Relevant paras 28, 29, 30, 31, 31 and 32 are extracted hereasunder:—*

"28. The apex court in the case of Samarjit Ghosh's case (supra) had therefore observed that when all the provisions of section 17 are considered together it is apparent that they constitute a single scheme. The apex court in Samarjit Ghosh's case (supra) was dealing with a situation where a newspaper employee had moved an application under section (1) of section 17 of the Act for recovery of dues. A dispute in respect of those dues had been raised and, in the meantime, the newspaper employee had been transferred to a State other than the State where he had moved an application under sub-section (1) of section 17 of the Act. A question arose as to which State Government would have a right to make a reference under sub-section (2) of section 17 of the Act for adjudication of the dispute to effect recovery under sub-section (1). In that context, the apex court had observed that it was the State Government before whom the application of recovery is made which will refer the question as to the amount due to the labour court and the labour court, upon receiving its decision, will forward its decision to the State Government, which will then direct recovery of the amount. While holding so, the apex court had examined the provisions of the Act and had come to a conclusion that when all the provisions of section 17 are considered together, it is apparent that they constituted a single scheme.

29. Further, under the Act, 1955, in exercise of powers under section 20 of the Act, 1955, Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 (in short Rules, 1957) have been framed. Rule 36 of Rules, 1957 provides for an application under Section 17 of the Act. It reads as follows:—

"36. Application under section 17 of the Act.—An application under section 17 of the Act shall be made in Form "C' to the Government of the State, where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed, is situated."

Form 'C' has been provided in the Rules, 1957. Title of the application as denoted by Form C is as follows:

"FORM 'C' APPLICATION UNDER SUB-SECTION (1) OF SECTION 17 OF THE ACT 45 OF 1955 (Rule 36) The aforesaid application is addressed to the Secretary to the Government....."

30. The Rules, 1957 do not provide for any separate application other than application under sub-section (1) of section 17 of the Act.

Having gone through the provisions of the Act, 1955, the Rules framed thereunder, the decisions cited by the learned counsel for the parties and, in particular, the decision of the Apex Court in Samarjit Ghosh's case (supra), this

Court is of the firm view that section 17 of the Act, 1955 contemplates a seamless single scheme for recovery of amount due to a newspaper employee from any employer under the Act, 1955. The application by a newspaper employee is to be filed under sub-section (1) of section 17 of the Act, as per Rule 36 of Rules, 1957. That application can be filed before the State Government or such authority, as the State Government may specify in that behalf. Where there exists no dispute, the State Government or the authority, so specified, upon being satisfied that any amount is so due, shall issue a certificate for that amount to the Collector and the Collector would, thereafter, recover that amount as an arrear of land revenue. Where a question or dispute arises then a reference is to be made to the labour court for adjudication of the dispute. After adjudicating the dispute, the labour court has to forward its decision to the State Government or authority which made the reference, upon which the amount is to be recovered in the manner provided by sub-section (1) of the Act. Since Section 17, as a whole, creates a single seamless scheme, the State Government, in exercise of its power under sub-section (1) can specify an authority to do all acts which it has power to do under Section 17 of the Act.

31. *In the State of Uttar Pradesh, the State Government, by notification dated 12th November, 2016, has delegated its powers to the Additional/Deputy/Assistant Labour Commissioners of the regions specified to dispose application made under section 17 of the Act, 1955. The notification does not limit the delegation to exercise of power contemplated by sub-section (1) of section 17. It is a broad delegation to exercise power to dispose application under Section 17. Once such power has been conferred upon the Additional/Deputy/Asstt. Labour Commissioner, in case of a dispute, the Deputy Labour Commissioner is also empowered to make a reference and such reference would be on behalf of the State Government as one contemplated by sub-section (2) of section 17 of the Act.*

    The contention of the learned counsel for the petitioner that there is a conscious omission of the words "such authority, as the State Government may specify in this behalf" in sub-section (2) of section 17 of the Act, 1955 and therefore it would be deemed that reference can be made only by the State Government and not by the specified authority cannot be accepted because when various parts of section 17 are read as a whole a single seamless scheme emerges. Even otherwise, the notification of the State Government delegates power to the authority specified to deal with applications under Section 17 which necessarily includes power to make reference under Section 17(2).

32. *It may be observed that a reference under sub-section (2) of section 17 of the Act does not contemplate exercise of judicial/quasi-judicial power and therefore the power which vests in the State Government to make a reference can be delegated and, in fact, by the notification dated 12th November, 2014, the State Government has clearly delegated its power by specifying the authorities who are competent to dispose the applications contemplated by section 17 of the Act. In fact, reference on an application under sub-section (1) upon a question having arisen is a step-in-aid of final disposal of an application under section 17 (1) of the Act, 1955 and, therefore, by conferring power on the specified authority to dispose the application under Section 17, the State Government, by necessary implication, has conferred power to make a reference as well."*

15. *Thereafter, various media houses challenged the notification dated 12.11.2014 through various writ petitions which was decided by co-ordinate Bench of this Court on*

08.07.2019, leading case being Hindustan Media Ventures Ltd. Jagatganj Varanasi vs. State of U.P. and others, 2020 (7) ADJ 555 wherein the Court held as under:—

"15. This Court is constrained to say most respectfully that the reasoning of his Lordship in paragraph 9 of the judgment in Jagran Prakashan Limited vs. State of Punjab and others (supra) is based on some mistaken reading of the U.P. Government Notification, inasmuch as, His Lordship there has held that the U.P. Notification has made a blanket law delegating powers of the Government under Section 17 of the Act to subordinate officers, without specifying whether the delegation is under sub-Section (1) or sub-Section (2) of Section 17. This reading of the U.P. Notification is contrary to the terms of the notification dated 12.11.2014, which clearly spells out that the delegation is under Section 17(1) of the Act. It is not a blanket delegation under Section 17 as held in Jagran Prakashan Limited vs. State of Punjab and others (supra).

16. This Court is afraid that if for a fact the basis of distinguishing the decision in Pradhan Prabandhak/ Unit Head M/s. Amar Ujala (supra), were factually correct, which it is not, the assistance sought to be derived by Sri Tripathi from the decision of the Punjab and Haryana High Court would have had more diminished prospects. But, it is not so. This Court has considered the reasoning adopted in Jagran Prakashan Limited vs. State of Punjab and others (supra) by the Punjab and Haryana High Court, and with greatest respect, for all that is said here and in the decision of this Court in Pradhan Prabandhak/ Unit Head M/s. Amar Ujala (supra), this Court is unable to agree."

34. In Pradhan Prabandhank (supra), this Court had already found that reference under sub-section (2) of Section 17 does not contemplate exercise of judicial/ quasi-judicial power and, therefore, the power which vests in the State Government to make a reference can be delegated and, in fact, by notification dated 12.11.2014, the State Government had clearly delegated its power by specifying the authorities who are competent to dispose the applications contemplated by Section 17 of the Act.

37. Moreover, the Apex Court in Samarjit Ghosh (supra) found that all the provisions of Section 17, considered together constitute a single scheme. Relevant para 6 of the judgment is extracted hereasunder:—

"6. When all the provisions of Section 17 are considered together it is apparent that they constitute a single scheme. In simple terms the scheme is this. A newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due the Collector will recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due, it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government it is that State Government which will call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the reference, and thereafter the State Government will direct that recovery proceedings shall be taken. In other words the State Government before whom the application for recovery is made is the State Government which

will refer the question as to the amount due to a Labour Court, and the Labour Court upon reaching its decision will forward the decision to the State Government, which will then direct recovery of the amount."

17. In both the above precedents the Hon'ble High Court of Bombay as well as Hon'ble High Court of Allahabad have discussed the observations made by the Hon'ble Apex Court in **Samarjit Ghosh case (Supra).** The Hon'ble High Court of Bombay had clearly pointed out that in the said judgment of **Samarjit Ghosh (supra),** the Hon'ble Apex Court had not dealt with the issue whether delegated authority can make reference under Section 17 Clause 2 of the Governing Act.

18. The Hon'ble High Court of Punjab and Haryana in **Jagran Prakashan Limited vs. State of Punjab and Others, CWP No.16275/2018 decided on 25.3.2019** has held in para no.10 as follows:—

"10. Mr. Kaushal has referred to the judgment of the Supreme Court in Kasturi and Sons (Private) Limited Vs. N. Salivateswaran and another, AIR 1958 SC 507 in which there is an illuminating discussion on the scope of Section 17 of the Act. He refers to paragraph Nos. 4, 10 & 11 of the judgment. The Court held that power of the authority 6 of 11 specified under Section 17 must be found in the provisions of the Act itself and they cannot be inferred from the accidental circumstances that the specified authority otherwise is a Member of Industrial Tribunal and went to observe as under:"

18. Thus the power of authorities specified under Section 17 has to be found within the provisions of the Act itself. Such power cannot be inferred from any other circumstances.

19. Hon'ble High Court of Bombay (Nagpur Bench) in **All India Reporter Private Ltd. vs. State of Maharashtra, WP No.6402 of 2019 decided on 17.11.2022** had struck down the notification dated 11.5.2016 which delegated power of making reference to Additional Commissioner of Labour under Section 17(2) of the Act in the said State. It held that "*in the absence of any such power of delegation being conferred upon the State Government under Section 17 Clause 2, of the Act of 1955 to refer any question as to whether any amount is due under the Act of 1955 to a newspaper employee, such reference has to be made by State Government itself".*

20. This court has thoroughly apprised itself about conflicting views of Hon'ble High Court of Bombay and Hon'ble High Court of UP and is constrained to adopt the view laid down by the Hon'ble High Court of Bombay in the above mentioned cases as the interpretation made by Hon'ble High Court of Bombay in **All India Reporter Pvt. Ltd. (supra)** is judgment of Double Bench and there are no conflicting view to coordinate bench of other High Court brought to this court by the parties. As already mentioned the findings of the Hon'ble Apex Court in **Samarjit Ghosh's case (supra)** are also varyingly interpreted and adopted by the Hon'ble High Courts mentioned above.

21. Learned Authorized Representative for the petitioner has referred the observation in the order of Hon'ble High Court of H.P. in **M/s Divya Himachal Prakashan Private Ltd. vs. Sunil Kumar and Ors., CWP No.2863 of 2020,** the para no.11 is as follows:—

"11. Bare perusal of Section 17 (1) clearly provides for issuance of recovery certificate in case authority is satisfied that amount claimed in the claim petition is due. Section 17 (2) encompasses a situation where dispute is raised by one party with regard to maintainability and sustainability of dispute. In that situation, Labour Officer is estopped from adjudicating that question, rather he is under obligation to make a reference to the Labour Court".

22. Considering overall findings of the Hon'ble High Court it is also important to mention the observations in paras no.16, 17 and 18 of this judgment which are as follows:—

"16. Reliance is also placed upon judgment passed by this Court in CWP No. 3076 of 2020 case titled M/s Divya Himachal Prakashan Pvt. Ltd. Vs. Onkar Singh. Relevant para of the aforesaid judgment read as under:

"1. The petitioner takes exception to the order of reference (Annexure P-3) made by the Labour Officer, Dharamshala on the 2024:HHC:13851-DB ground that the same does not incorporate all the points of the defence as raised by the petitioner.

2. It is more than settled that the Labour Officer is only required to make a reference and not to formulate points or issues for determination for the Reference Court.

3. Reference made by the Labour Officer in this regard reads as under:

"Whether the claim submitted by Sh.Onkar Singh S/o Sh. Labhu Ram, R/o Village Badai, P.O. Sunehar Tehsil Nagrota Bagwan, District Kangra, H.P. under Section 17(1) of Working Journalists and Other News Paper Employees (Conditions to Service) and Miscellaneous Provisions Act, 1955 amounting Rs.45,70,662.00 is legal and justified if not what amount of benefit of claim the above worker is entitled to from the above Employer."

4. A plain reading of the aforesaid reference makes it absolutely clear that the Labour Court will be required to adjudicate not only the issue of maintainability of the reference, but even the other questions like delay, laches and entitlement etc. would also required to be determined. After all, reference is being made on the legality as also justifiability of the claim.

5. In such circumstances, it shall be open for the petitioner to raise all the questions as were raised in the reply to the application filed under Section 17 (1) of the Working Journalists and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, before the Labour Court-cum-Industrial Tribunal."

17. Reliance is also placed upon judgment passed by Hon'ble High Court of Delhi in case titled The Associated Press through its General Manager v. Laurinda Keys and Anr. 2009 SCC OnLine Del 2232.

18. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court finds no illegality or infirmity in the impugned order and as such, same is upheld and dismissed accordingly".

23. This court has to adjudicate the maintainability of the reference along-with other issues. The **Stare Decisis** mentioned above points towards notification dated 18.10.2016 has been made under Section 17 Clause 1 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 thus the Labour Officer designated therein by the notification does not have any power to refer the dispute for adjudication under Section 17 Clause 2 of the Governing Act.

24. In view of the above discussion the reference which has been made to this court by the authority is without jurisdiction as State Government does not have any power to delegate its

authorities under Section 17 Clause 2 of the Governing Act. In view of the above the reference being defective the claim is not maintainable neither this court would have jurisdiction to adjudicate the same on merits. Accordingly issues no.3 and 4 are decided in the favour of the respondents.

Issues No.1, 2, 5 and 6

25. While deciding the issues no. 3 and 4 above, it has been thoroughly discussed that the reference made to the Labour Court is defective as the designated authority had no jurisdiction to send to Labour Court the reference for adjudication of amount due. The State has not express authority to delegate its function as provided in Section 17 (2) of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. In these circumstances it would not be in the interest of justice to adjudicate qua the facts of the case on merits. The State Government shall be at liberty to remove defect in process of making the reference. Accordingly issues no.1, 2, 5 and 6 shall remain redundant.

Relief

26. In view of my findings on the issues no.3 and 4 above the reference made by the designated authority being defective in law. The reference is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

27. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN**, PRESIDING JUDGE, LABOUR COURT**-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 18/2018

Date of Institution : 28.3.2018

Date of Decision : 27.08.2025

Smt. Guddi Devi w/o Shri Krishan Chand, r/o Village Putlipald, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner*.

Versus

The Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Vijay Kaundal, Ld. Adv.

For the Respondent : Shri B.C. Katoch, Ld. Dy. D.A.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:—

> "Whether termination of the services of Smt. Guddi Devi w/o Shri Krishan Chand, r/o Village Putlipald, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 01.06.2000 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is that she was engaged as daily rated beldar by the respondent *w.e.f.* 1st July 1998 in the Dharampur Division and she worked as such till 31.5.2000 when her services were terminated orally without following the procedure as provided under the Act. It is asserted that the respondent has not prepared the seniority list and workmen junior to petitioner were permitted to continue and fresh hands were also joined. It is asserted that the names of junior workmen have been mentioned in para no. 3 of the petition. It is asserted that the retrenchment of workmen took place on political basis in between 1999 to 2005 and hundreds of daily rated workers were terminated. It is submitted that the petitioner visited the respondent time and again with the prayer that she be reinstated, but she was put off on one or the other pretext on the ground that since similar issue of number of retrenched workmen was under consideration before Government of H.P, therefore, decision qua her case shall also be taken with those cases. Nothing was done later on, and the petitioner raised the demand in the year 2009 but her matter was not referred to the court on the ground of delay. She filed writ petition which was dismissed by Hon'ble High Court and thereafter she approached the Hon'ble Supreme Court and it was observed by the Hon'ble Court that the matter be referred for adjudication ignoring the objection of delay in the matter and in this manner the present reference was made to this court. The petitioner has thus prayed for her reinstatement with all the consequential benefits.

3. In reply to the claim petition filed on behalf of the respondent preliminary objections qua maintainability and delay and laches have been raised. On merits, it is mentioned that that the petitioner was engaged as daily rated beldar on muster roll basis *w.e.f.* January 1999 and she worked intermittently upto September 1999 and thereafter left the services at her sweet will. It is alleged that she has not completed 240 working days in the preceding 12 calendar months, and therefore, there was no violation of Section 25-F of the Act. The respondent has denied that any workmen junior to the petitioner was retained and her services were terminated. The respondent has denied that the petitioner was assured at any point of time to be reinstated with other terminated workmen. It is further contended that the petitioner has approached the court after considerable delay and now she was not entitled for any relief. Other averments made in the claim petition are denied and it is prayed that the petition deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 01-06-2000 is/was illegal and unjustified as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . . *OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged? . . *OPR.*

Relief

6. The petitioner in order to prove her case has produced on record affidavit Ext. PW1/A wherein she has reiterated that facts stated in the claim petition. She has also produced on record copy of demand notice daed 3.2.2009 Ext. PW1/B, copy of order of Hon'ble High Court Ext. PW1/C and copy of judgment passed by Hon'ble High Court Ext. PW1/D. Respondent has examined Er. Vivek Sharma, Executive Engineer, Dharampur Division, HPPWD Dharampur, District Mandi, H.P. by way of affidavit Ext. RW1/A wherein he has reiterated the facts as stated in the reply. He has also produced on record copy of mandays chart Ext. RW1/B.

7. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

8. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed per operative portion of the Award

REASONS FOR FINDINGS

Issue No.1

9. The petitioner in the present case has appeared in the witness box as PW1 and she has stated on oath that she was engaged as daily rated beldar by the respondent on 1.7.1998 in HPPWD Dharampur Division and she worked upto 31.5.2000. She has alleged that she was wrongly and illegally retrenched *vide* order dated 31.5.2000 *w.e.f.* 1.6.2000. She has further alleged that the juniors to her in the same category were allowed to continue and they are still working with

HPPWD Division Dharampur. She has further alleged that fresh workmen had also been engaged by respondent department violating the basic principle of 'first come last go' and her retrenchment is against the provisions of Sections 25-G, 25-H and 25-N and other provisions of the of the Industrial Disputes Act. She has deposed that when she was disengaged many junior to her were allowed to continue and their service were regularized *w.e.f.* 28.11.2008. The names of juniors Savitri Devi w/o Roshan Lal, Rajesh Kumar s/o Sunder Singh, Shashi Lal s/o Bihari Lal, Sat Pal s/o Sunder, Roshani w/o Nag, Gulab Singh s/o Bhalkhu Ram, Devender Kumar s/o Ram Dayal, Barfu Ram s/o Haru Ram, Krishna Devi w/o Prem Singh, Achhari Devi w/o Prabhu Ram, Barfi Devi w/o Amrit Lal, Raj Kumar s/o Chand Ram and Ranjeet Singh s/o Kashmir Singh. According to petitioner there were sufficient work and funds available with HPPWD Dharampur at the time of retrenchment of the petitioner. She has asserted that she completed 240 days of work in the preceding 12 calendar months prior to her retrenchment. The retrenchment of workmen was initiated by respondent on some political basis in the year 1999 which continued till 8.7.2005. For about six years 100 daily rated workers were terminated and illegal retrenchment of workmen was made in the year 2000, 2001, 2002, 2003, 2004 and also in the year 2005. After her illegal termination she visited the office of the respondent many times, requested to re-engage her but they lingered on the matter on one pretext or another. They assured her that they will definitely take decision to call her back on the rolls. On 9.2.2004 1857 daily waged workmen of HPPWD (B&R) Division Dharampur were retrenched but later on maximum of them including junior to the petitioner were re-engaged. But the respondent lingered on the matter on one pretext and another. Respondent retrenched 1087 workmen w.e.f. 8.7.2005 and she was told by respondent that since large scale retrenchment were made in Dharampur Division the government definitely will take decision qua the reinstatement of the workmen including the petitioner. The workers who were retrenched *w.e.f.* 8.7.2005 were given three months notice pay in lieu of notice period under Section 25-N of the Industrial Disputes Act and also retrenchment compensation as per provisions of Section 25-N of the Industrial Disputes Act. These workmen raised industrial dispute and the matter was referred to this court. The court vide orders dated 30.3.2009 passed award and gave benefits of reinstatement, seniority and back wages. This award was challenged by respondent before the Hon'ble High Court whereby Hon'ble High Court in LHLJ 2010 volume 2 titled as Executive Engineer HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 has held that the retrenchment is against the provision of law and 50% back wages of Rs. 50,000/- in lump sum were paid as compensation. In compliance of the order of Industrial Tribunal Dharamshala dated 30.3.2009, 43 workers joined their duties. The petitioner had requested to reinstate as the workers junior to the petitioner were being re-engaged but still she was not engaged by the respondent. She has alleged that respondent had continued to linger on her matter on one pretext to other. She also remained ill for some period and finally filed her demand notice before the Labour Commissioner, H.P. who refused to send the matter for adjudication alleging that the same was time barred and dispute faded with passage of time. Against said order CWP No.2646/2013 titled as Daler Khan vs. State of HP was filed and Hon'ble High Court had dismissed CWP on 18.6.2013. She challenged the said order of the Hon'ble High Court before the Hon'ble Supreme Court by way filing SLP and the Hon'ble Apex Court vide its judgment dated 6.11.2017 allowed the SLP and directed the appropriate government to consider the case of the petitioner for reference and this led to present reference. In a similar matter the Hon'ble High Court of H.P. vide its judgment passed in CWP No. 5304/2012 titled as Nawab Khan vs. State of H.P. & Ors., CWP No.5189/2012 titled as Kanta Devi vs. State of H.P. & Ors. has directed the respondent to reinstate the petitioner giving them seniority. She has asserted that Hon'ble Apex Court while deciding the matter in which there was delay of 15 years raising the industrial dispute, in case titled as **Sapan Kumar Pandit vs. U.P. State Electricity Board, 2001 LLR 900** has held that the workmen dispute can be referred for adjudication even after long delay. The similar matter was decided by Hon'ble High Court of H.P. wherein HP Government had not referred the matter to the labour court. These matters were decided vide CWP No.6438/2013 titled as Pratap Singh vs. State of H.P. on 6.9.2013, CWP No.5737/2013 titled as Desh Raj vs. State of H.P. and decided on

21.9.2013, CWP No. 6582/2013 titled as Onkar Chand vs. Executive Engineer and Ors. decided on 10.9.2013 and CWP No. 6641/2013 titled as Sheela Devi vs. State of H.P. and Ors. decided on 13.9.2013. In these writ petitions the Hon'ble High Court had directed the appropriate government to refer the matter to industrial tribunal for adjudication. The petitioner has prayed for her reinstatement with full back wages, continuity in service from the date of her illegal retrenchment and consequently benefits of compensation etc. in accordance with the provision of law.

10. Respondent on the other hand has maintained in the statement of Er. Vivek Sharma by way of affidavit Ext. RW1/A that the petitioner was a daily rated bedlar on muster roll basis in the year 1/1999 and worked intermittently upto 9/1999 as evident from mandays chart which they have annexed with the reply. They have denied that petitioner was engaged on 1.7.1998 and in Dharampur HPPWD Division and worked till 31.5.2000 and illegally retrenched vide oral order dated 31.5.2000. They have also denied that the petitioner had worked for 240 days in the 12 months preceding her disengagement. They have alleged that petitioner had abandoned the work of her own sweet will. The facts pertaining to retrenchment of the workers in the month of February, 2004 and July, 2005 are accepted to be true and correct as these workers were retrenched after codal formalities.

11. The petitioner has claimed that she had worked with the respondent since the year 1.7.1999 upto 31.5.2000. She has also asserted that she completed 240 days of work in the year preceding her retrenchment. In her cross-examination she has denied that she was employed only in January, 1999 but asserts that she was employed in the year 1998. She has denied that respondent has not violated the provisions of Sections 25-G, 25-H and 25-N of the Industrial Disputes Act. She has also denied that she had abandoned the work out of her own free will. RW1 Er. Vivek Sharma has denied that the petitioner was engaged on 1.7.1998 as beldar and he has asserted that she was engaged in the year 1999. He has also denied that petitioner worked till 31.5.2000 and that her services were terminated in illegal manner. Respondent has produced on record the documents Ext. RW1/B which is the mandays chart of the petitioner. A careful perusal of the mandays chart which has been produced before this court shows that petitioner has not worked during year 1998 but she completed 237 days of work from 1/1999 to 9/1999. At this stage it would be important to peruse the observation made by Hon'ble High Court of HP in **CWP No.1587 of 2025** decided on 28.7.2025 titled as **Guddi Devi vs. The Executive Engineer, HPPWD** the matter assailed before the Hon'ble High Court pursuant to the award passed by my learned predecessor. It has been observed by the Hon'ble High Court in para no. 3 as follows:—

> "3. Learned Counsel for the petitioner while taking the Court through the award as also the pleadings has submitted that learned Labour Court has prima facie erred in coming to the conclusion that the petitioner has not completed 240 days in the preceding 12 months as from the date of her termination because Annexure R-1 appended with the reply filed to the petition demonstrates that in the 12 preceding months as from the date when her services were terminated i.e. in the year 1998, from the month of July to December, she has completed 113 days and as from the January 1999 up to September, 1999, she worked for 237 days. Meaning thereby that if we take nine months of the year 1999 as well as preceding three months of the year 1998, then obviously, the petitioner has completed more than 240 days in the preceding 12 months as from the date of her termination. Therefore, the findings returned by learned Labour Court with regard of the provisions of Section 25-F are perverse findings. Learned Deputy Advocate General could not controvert that it was clearly borne out from the record that in the preceding 12 months as from the date when services of the petitioner were terminated, she had actually completed more than 240 days. Therefore, obviously the findings High Court of H.P. returned to the contrary by learned Labour Court are perverse as this aspect of the matter has been wrongly decided by the learned Labour Court".

12. It appears that the respondent has submitted the mandays chart pertaining to the petitioner for the year 1998 before the Hon'ble High Court which has been suppressed before this court at the time of trial. This court sticking with the observation made by Hon'ble High Court on the basis of mandays chart submitted before it comes to the conclusion that petitioner has completed 240 days of work in 12 months preceding the date of her disengagement by the respondent. Petitioner has alleged that respondent has violated the basic provisions of Section 25 Clause F of the Industrial Disputes Act. Respondent has not produced any oral or documentary evidence to establish that the petitioner has left the work at her own sweet will. No oral or documentary evidence is produced to show that after the alleged abandonment by the petitioner the respondent had tried to issue any notice or approach the petitioner for providing work to her. It is important to mention here that respondent has not disputed that they did not have available work and funds during the time when the petitioner was disengaged. In these circumstances it is proved that respondent has dispensed with the services of petitioner without mandatory compliance of Section 25 Clause F of the Industrial Disputes Act.

13. The petitioner has alleged that after her disengagement other workmen have been retained by the respondent. She has specifically submitted that in compliance of the order of H.P. Administrative Tribunal dated 30.3.2009 43 retrenched workmen had joined their duties *w.e.f.* 16.9.2009. At that time petitioner had requested the respondent to reinstate her as she was senior to the persons/workmen junior to her ordered to be reinstated however no response was given by the respondent. RW1 Shri Vivek Sharma has not expressly denied these averments in his affidavit. RW1 Shri Vivek Sharma in his cross-examination has admitted that no notice to the petitioner was given when she left her job. He has expressed his ignorance to the suggestion that Smt. Savitri Devi w/o Shri Roshan Lal was engaged. Subsequently he has expressly stated that the workers shown in para no. 3 of affidavit of petitioner were reengaged. He has admitted that no seniority list has been produced on record by the department. He has however asserted that seniority list of workmen who have completed 240 days of work in any calendar year has been prepared however despite submitting mandays pertaining to the petitioner before the Hon'ble High Court he has not produced seniority list in respect of the present petitioner. He has admitted that workmen shown in para no. 3 of the affidavit of petitioner have been regularized in the year 2008. Perusal of pleadings as well as statement of the witnesses shows that after the disengagement of petitioner the other workers junior to the petitioner were retrenched and subsequently they were reinstated and continued in service. During these period also no opportunity was given to the petitioner nor any notice was issued for her reinstatement by the respondent. Thus respondent had violated the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act. Issue No.1 is partly decided in the favour of the petitioner.

Issue No. 2

14. It has been proved from the evidence on record that respondent had committed violation of Sections 25 Clause F, 25-G and 25-H of the Industrial Disputes Act, 1947 in respect of services rendered by the petitioner. She was disengaged from her service without mandatory compliance subsequently no notice was issued to the petitioner at the time of re-engagement of the persons junior to the petitioner. Learned Dy. D.A. for the State has vehemently argued that petitioner had raised the demand notice after unexplained period of more than 10 years therefore she cannot be granted the relief of reinstatement along with back wages. Contrary to this the learned counsel for the petitioner has submitted that petitioner after her illegal disengagement has time and again approached the respondent in order to engagement her service. Her request was not considered by the respondent on one pretext on the other. The various workers who have been retrenched and subsequent re-engaged by the orders of tribunal and Hon'ble High Court have been clearly mentioned in the petition by the petitioner and such averments were also made by her in her affidavit. It is also brought to the notice of this court on pursuant to the fact that the Labour

Commissioner had declined to make reference with respect to industrial dispute raised by the petitioner. The petitioner had preferred CWP No.2646/2013 titled as Daler Khan vs. State of HP where the Hon'ble Court had declined to interfere in the orders of the Labour Commissioner. The petitioner and others had filed Civil Appeal No.18012-18013 of 2017 (Special Leave Petition Nos. 30103-30104 of 2017) before the Hon'ble Supreme Court titled as Daler Khan vs. State of HP wherein the Hon'ble Supreme Court had observed in para no.5 "*therefore, these appeals are allowed with a direction to respondent no.1 that the cases of the appellants shall also be considered for reference, ignoring the objection in the matter of delay".* The reference which has been made to this court by the Labour Commissioner itself does not make any description with regard to the issue of delay and laches on the part of the petitioner.

15. Hon'ble High Court H.P. in **State of H.P. & Ors. vs. Pal Singh CWP No. 3551 of 20124** (pertinent to mention that Shri Pal Sngh was one of the petitioners who had approached the Hon'ble Supreme Court against the order of the Labour Commissioner declining to make reference in the similar type of case as that of the present petitioner) has held in para no.11. "Otherwise also, CWP no. 3551 of 2024 decided on 1.5.2024. A bare perusal of reference made by appropriate government to the court the question of delay and laches was referred to Labour Court-*cum*-Industrial Tribunal and as such Tribunal below rightly ignored the same while answering the reference. While allowing the Civil Appeal No.18012-18013 of 2017, Hon'ble Apex Court specifically observed that appropriate government should ignore the objection of delay and laches in this background, appropriate government while making reference purposely did not refer the matter with regard to delay and laches to the Labour Court-cum-Industrial Tribunal. If it is so, there was otherwise no occasion for the Industrial Tribunal to look into the aspect of delay and laches.

16. In the circumstances of the case also the Labour Commissioner while making reference did not refer the matter with regard to delay and laches. Pursuant to the above observation made by Hon'ble Apex Court as well as Hon'ble High Court of HP the question of delay and laches shall not be taken into consideration by this court also. Since it is proved that the respondent had committed gross violation of Sections 25-F, 25-G and H of the Industrial Disputes Act, the petitioner is held entitled for reinstatement on her post with seniority and continuity in service from the date of her illegal retrenchment/termination along-with all consequential service benefits. She is however held entitled to a compensation of Rs.50,000/- in lieu of back wages which would be paid along-with interest @ 6% per annum from the date of her illegal retrenchment till realization of the amount. Issue No.2 is decided accordingly.

Issues No. 3 and 4

17. The onus of proving these issues was on the respondent. Maintainability of the claim was dependent upon the contention of the respondent regarding non completion of 240 days of services by the petitioner and the delay in raising dispute before conciliation officer. It has been observed in detailed while deciding issue no.1 that the petitioner has completed mandatory period of service which required compliance of Section 25 Clause F of the Industrial Disputes Act, 1947 on the part of the petitioner at the time of her disengagement. Similarly issue of delay and laches has been settled down already by the appellate courts. In these circumstances issues no.3 and 4 are also decided in the favour of the petitioner.

Relief

18. In view of my discussion on the above issues, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement on her post with seniority and continuity in service from the date of her illegal retrenchment/termination along-with all consequential service benefits. She is however held entitled to a compensation of Rs. 50,000/- in lieu of back wages

which would be paid along-with interest @ 6% per annum from the date of her illegal retrenchment till realization of the amount. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 27th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 551/2016

Date of Institution : 24.8.2016

Date of Decision : 27.8.2025

Shri Ravinder Aggarwal s/o Shri Ram Swaroop, r/o Ward No. 8, College Road, Kangra, Tehsil & District Kangra, H.P. . . *Petitioner.*

Versus

The Managing Director, Amar Ujala Publication Ltd., Plot No. 22, 23, Industrial Area, Nagrota Bagwan, Tehsil Nagrota Bagwan, District Kangra, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ravinder Aggarwal, Ld. AR

For Respondent : Ms. Sapna Thakur, Ld. Adv. Vice

AWARD

The following industrial disputes have been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether the demands raised by Shri Ravinder Aggarwal s/o Shri Ram Swaroop, r/o Ward No. 8, College Road, Kangra, Tehsil & District Kangra, H.P. vide demand notice dated 14-11-2014 (copies enclosed) to be fulfilled by the Managing Director, Amar Ujala Publication Limited, Plot No. 22, 23 Industrial Area, Nagrota Bagwan, Tehsil Nagrota Bagwan, District Kangra, H.P. is legal, justified and maintainable? If yes, what relief the above worker is entitled to from the above mentioned management/employer?"

2. Separate statement of Shri Ravinder Aggarwal (petitioner/claimant) has been recorded vide which he intends to withdraw the present reference/claim in accordance with CWP No. 2600/2017 vide its order dated 14.8.2025. In view of the statement of petitioner/claimant and considering the order of the Hon'ble High Court, the present reference/claim is dismissed as withdrawn.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 27th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 118/2017

Date of Institution : 21.6.2017

Date of Decision : 28.8.2025

Shri Jagdish Chand s/o Shri Rajmal, r/o Village Sakraindhar, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Employer/Manager, M/s GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan H.P. (Work Office).

2. The Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla.

3. The Managing Director, M/s Adecco India Private Limited, No.2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore (Corporate Office) . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For Respondent No. 1 : Sh. Vijay Kaundal, Ld. Adv.

For Respondent No. 2 : Sh. B.C. Katoch, Ld. Dy. D.A.

For Respondent No. 3 : None

AWARD

The following reference has been received by this court for adjudication from the appropriate Authority/Deputy Labour Commissioner:—

> "Whether termination of services of Shri Jagdish Chand s/o Shri Rajmal, r/o Village Sakraindhar, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 25-05-2015 by (i) the Employer/Manager M/s GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Officer. (ii) the Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla (iii) The Managing Director, M/s Adecco India Private Limited, No. 2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that the applicant was initially appointed as Emergency Medical Technicians EMT (Associate) for a period of one year on contract basis *w.e.f.* 15.7.2013 to 15.7.2014 and was ordered to be posted at Janjali, District Mandi H.P. Thereafter his contract was renewed from time to time. It is asserted that the applicant had discharged his duties with full devotion and the applicant was awarded with certificate of appreciation by the respondents which was duly endorsed by the H.P. Govt. The work of applicant was marked in EMCARE (The Magazine) issued/published by the respondents. The respondents had promoted the applicant time to time and during his service period he was transferred by the respondent in different places. The applicant had discharged his duties sincerely and faithfully and service of applicant was required by the respondents but the services of applicant were terminated without any reason and his contract was not renewed by the respondents. While terminating the services of the applicant person juniors to the applicant were retained and fresh persons engaged in violation of the provisions of Section 25-H of the Industrial Disputes Act. After the disengagement of the applicant the respondents have retained and engaged fresh person without giving an opportunity to the applicant for re-engagement. It is alleged that while disengaging the petitioner the respondents had not followed the provisions of Section 25-F of the Industrial Disputes Act which was illegal and void ab initio. It is asserted that the respondents had tried to take undue advantage of clause 1.1.1(a) of agreement in which the Government of HP/respondent no.1 agreed qua autonomy and operational freedom to the respondents with regard to selection, hiring, appraisals, transfers and termination/dismissal of staff from BIZ agencies, preparation of training procedures all employees of GVK EMRI HP would be appointed on contract and duration of contract not more than 5 years would be clearly mentioned so there was no long term obligation for employment. It is asserted that the respondent no.1 had not only acted in arbitrary manner but violated its own rules mentioned in 1.1.1 whereby it is specified that the services of employee shall be liable to be terminated by giving two months notice by the either side. Act of respondent no.1 was punitive in nature and as such action on the part of the respondent no.1 was not sustainable in the eyes of law and the same had caused gross violation of the principles of natural justice. It is alleged that the act on the part of the respondents was wholly discriminatory, unconstitutional and violative of provisions of the Industrial Disputes Act and as such the termination of the services of applicant *w.e.f.* 24.5.2015 by the respondent no.1 deserves to be quashed and the applicant be held entitled to be reinstated as fleet pilot along-with consequential benefits. It is prayed that the verbal termination/disengagement dated 24.5.2015 by respondents may be quashed and the respondents

may be directed to reinstate the applicant as fleet pilot along-with all consequential benefits *i.e.* seniority, and arrears of pay/wages etc.

3. In reply to the claim petition on behalf of respondent no.1 preliminary objections qua maintainability, cause of action, locus standi and suppression of material facts have been raised. On merits, it is admitted that the State of Himachal Pradesh had started Emergency Medical Services with the intention to improve access to healthcare which was being provided to needy people in the entire state particularly in emergency situation to the general public and also provided emergency response No.108 for responding to medical police and emergency services. To achieve the said goal the Government of Himachal Pradesh and respondent no.1 entered a public private partnership agreement with GVK-EMIU wherein respondent no.1 was financed by the grant-in-aid released by the Government of H.P. It is admitted that applicant was appointed as Emergency Medical Technician EMT (Associate) for a period of one year on contract initially *w.e.f.* 15.7.2013 to 15.7.2014 and was ordered to posted at Janjali, District Mandi, H.P. It is denied that the applicant had discharged his duties sincerely and faithfully. It is also denied that the services of Emergency Medical Technician EMT (Associate) was required by the respondent no.1. It is further denied that the contract of the service of the applicant wad unreasonably ordered not to be renewed without any valid reason. It is specifically denied that the replying respondent had terminated the services of the petitioner on 24.5.2012 by verbal order. It is submitted that the services of applicant was terminated by respondent no.15.9.2015 and not on 24.5.2012. It is also submitted that the applicant was contractual employee and his service could be terminated by way of giving one month's notice as per Clause 2 of appointment letter dated 15.7.2013. Respondents denied that after verbal termination of the applicant, respondent no.1 had retained juniors and engaged fresh persons. It is submitted that the services of the applicant were falls under the provisions of Section 2(oo) of the Industrial Disputes Act, 1947 hence question of violating Section 25-H of the Industrial Disputes Act does not arise at all. Other averments parawise made in the petition were denied and it is prayed that the claim deserves to be dismissed.

4. In reply to the claim petition on behalf of respondent no.2 preliminary submission has been raised qua maintainability as against the replying respondent. It is mentioned that emergency ambulance service earlier in the name of Atal Swasthya Seva (108) and presently renamed as National Ambulance service (108) was being run by State of H.P. in the interest of patient care and public at large under the public private partnership mode through GVK Emergency Management and Research Institute (GVK-EMRI) *i.e.* respondent no.1 for which the agreement and MOU was executed between both the parties on 9.7.2010. It is asserted that respondent no.1 *i.e.* M/s GVK EMRI was further entered into agreement with one M/s Adecco Flexion Workforce Solutions Private Limited *i.e.* respondent no.3 for hiring manpower and staff to run the National Ambulance Service with certain specific terms and conditions. It is asserted that the respondent no.1 and respondent no.3 were being the concerned authorities in the matter of hiring as well as removing the services of the staff of National Ambulance Service (108). It is submitted that certificate of registration was issued to respondent no.1 for carrying out the emergency services with respect to Atal Swasthya Sewa (presently renamed as National Ambulance Service) by the Labour Department, the principal employer was M/s GVK EMRI and the replying respondent was not at all the principal employer. On merits, it is submitted that the services of the petitioner were engaged by the respondent no.3 on behalf of respondent no.1 and further continued as per their requirement. It is submitted that the contention with regard to petitioner having been served with full devotion and sincerity are denied for want of knowledge on part of replying respondent as the petitioner for all intents and purposes was serving under the respondent no.1 after being engaged by the respondent no. 3 and added that certificate of appreciation if any does not create any legally enforceable right in favour of the petitioner for any claim over and above. All the other parawise averments made in the petition were denied and it is prayed that the petition deserves to be dismissed.

5. In reply to the claim petition on behalf of respondent no.3 preliminary objection qua maintainability has been raised. On merits, it is asserted that the contract service of applicant was renewed by respondent no.1 after 2013 as the contract between replying respondents and respondent no.1 stood terminated in August, 2013 and still the respondent no.1 is providing jobs/service to HP Government *i.e.* respondent no. 2. It is asserted that the there was no role of replying respondents with regard to provide jobs or termination of any one as it was done by respondent no.1. It is prayed that the petition may be dismissed against the replying respondents in the interest of justice.

6. In the rejoinders preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

7. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of services of the petitioner *w.e.f.* 25-05-2015 by respondents is/was illegal and unjustified, as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the employers/respondents? . . *OPP.*

3. Whether the claim petition is not maintainable? . . *OPR.*

Relief

8. I have heard the learned counsel for respondent no.1 and learned Dy. DA for the respondent no.2 at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Relief. : Claim Petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

10. All the issues shall be taken up together for the purpose of adjudication.

11. The petitioner in the present case failed to appear before this court on 28.8.2025. The report shows that the petitioner was duly served for the said date. Despite due service and knowledge of the proceedings he did not put his presence nor any Counsel appeared on his behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party."

12. It is argued by learned counsel for respondent no.1 as well as learned Dy. D.A. for respondent no. 2 that the onus of proving the averments and allegations by way of leading oral or documentary evidence in the court is on the claimant. The learned counsel for respondent no.1 and learned Dy. DA has further submitted that considering the conduct of the petitioner and the fact that he is not able to substantiate the allegations by way leading evidence the reference cannot be decided in favour of the claimant.

13. The perusal of the case file shows that the petitioner has received the summons of the court as ample opportunities has been granted to the petitioner to appear before this court to produce evidence oral as well as documentary. He failed produce the evidence but despite having knowledge of the proceedings failed to appear before this court hence he was proceeded ex parte. The onus of proving the fact that termination of the services of the petitioner by the respondent during May, 2015 was illegal and unjustified was on the petitioner. In absence of cogent evidence to this effect the reference cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

> "22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

14. Hon'ble Supreme Court in **M/s Haryana Suraj Malting Ltd. vs. Phool Chand, AIR 2018 SC 2670** has observed thus under the statutory scheme the Labour Court/Tribunal is empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the Industrial Dispute and for maintaining industrial peace. If a party fails to attend the Court/Tribunal without showing sufficient cause, the Court/Tribunal can proceed ex parte and pass an ex parte award. The award, ex parte or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

15. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to adduce evidence to substantiate allegations.

Relief

16. In view of the above, the reference/claim petition is not maintainable and is accordingly dismissed. The parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 93/2023

Date of Institution : 03.11.2023

Date of Decision : 28.8.2025

Shri Kush Kumar Jaswal s/o Shri Pratap Singh Jaswal, r/o V.P.O. Simas (Jol), Tehsil Ladhbharol, District Mandi, H.P. . . *Petitioner.*

Versus

The Managing Director/Employer, M/s Hi Tech. Satluj Motors Private Limited, Lunapani, P.O. Bangrutu, Tehsil Balh, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Ms. Vijay Bhandari, Ld. Adv.

For Respondent : Already exparte

AWARD

The following industrial disputes have been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:—

> "Whether the termination of services of Shri Kush Kumar Jaswal s/o Shri Pratap Singh Jaswal, r/o V.P.O. Simas (Jol), Tehsil Ladhbharol, District Mandi, H.P. by the Managing Director/Employer, M/S Hi Tech Satluj Motors Private Limited, Lunapani, P.O. Bangrutu, Tehsil Balh, District Mandi, H.P. w.e.f. 01-08-2020 (as alleged by workman) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the applicant was engaged as regular Service Advisor by the respondent and worked continuously as such upto 3.8.2020 period from the year 2013. The applicant was paid monthly wages of Rs.7625/- per month. It is alleged that the respondent imposed fine from time to time in his service period without any reason or show cause notice. It is asserted that respondent had not paid three month salary of applicant due to his ill health in the year 2017 and cut down his name from the roll of employees without any show cause notice. It is asserted that the applicant had attended skill training programme under the supervision of respondent for enhancement/increment hike in the salary but no increment hike was made by the respondent as well as in corona period 2020. On 23.3.2020 to 3.5.2020 the applicant also attended online skill training programme. It is alleged that the respondent had changed the terms and condition of the petitioner by giving him transfer letter, Una which was not authorised signatory of respondent. It is asserted that the applicant was deprived of his interest rate of EPF and salary hike due from the year 2013 till the year 2020. It is asserted that the applicant had served demand notice dated 10.8.2020 and requested the respondent to settle his claim but in vain. It is asserted that the respondent had sufficient work and finance but the respondent is neither willing nor settled the claim and not engaged the applicant. It is asserted that the applicant had worked for 240 days from

2013 to 2020. It is alleged that the termination of the services of the petitioner by the respondent was wrong and illegal. It is therefore prayed that keeping in view of the submissions made above the petition may be allowed and termination order dated 3.8.2020 may be set aside and be declared null and void and settle the claim of applicant in the interest rate of 18% per annum.

3. It is pertinent to mention here that the respondent was proceeded ex parte on 07.4.2025 as he failed to appear despite service.

4. In order to prove his case the applicant has produced on record his affidavit Ext. PW1-A and documents i.e. various receipts Ext. PW-A2 to Ext. PW-A12, copy of demand notice dated 10.8.2020 Ext. PW-A13 and copy of rejoinder to demand notice dated 28.10.2020 Ext. PW-A14.

5. I have heard the learned Counsel for petitioner at length and records perused.

6. The petitioner had mentioned in his affidavit that he was engaged as Regular Service Advisor by the respondent and was working as such up to 03.08.2020 in continuation of service period from the year, 2013. He was paid regular monthly wages of Rs.7625/- per month. The respondent has imposed fine to him time to time without any reason and without any show cause notice. Due to ill health of the petitioner in the year, 2017 the respondent did not pay him three months salary and cut down from the role of the employees without any show cause notice. The petitioner has attended "Skilled Training Programme" under the supervision of the respondent for the enhancement/increment hike in the salary, but no increment hike was made by the respondent even in "Corona Period, 2020". The petitioner has attended online skill training programme on 23.03.2020 to 03.05.2020. It is alleged that the respondent had changed the terms and conditions of service of the petitioner by transferred him to Una by way of transfer letter which was not authorized signatory of Satluj Motors Pvt. Ltd. Lunapani, District Mandi, H.P. He was deprived EPF along-with interest and hike salary due from the year, 2013 to 2020. The demand notice was duly served on the respondent on 10.08.2020. The respondent contested the conciliation proceeding before the Labour Officer, Mandi consequent to which the present reference was made to this Court. It is alleged that the respondents have sufficient work and finance but not settled the genuine claim of the petitioner. The petitioner asserted that he was completed 240 days in the calendar year from 2013 to 2020 and changed his service conditions as well as termination of the petitioner are wrong and illegal. The petitioner prayed that the termination order dated 03.08.2020 may be set aside and petitioner be held entitled for his claim along-with interest. He has also prayed that transfer order dated 01.08.2020 be set-aside in the interest of justice. He has also prayed for recovery of final amount of three month salary along-with interest, gratuity along-with interest, 10% salary hike, salary for month of April and May, 2020 and leave holidays along-with other relief.

7. The oral evidence produced by the petitioner has remained un-rebutted as respondent failed to contest the claim filed by the petitioner. The petitioner has produced his affidavit Ext. PW1/A along-with documents receipt Ext. PW-A2, Ext. PW-A3, Ext. PW-A4, Ext. PW-A5, Ext. PW-A6, Ext. PW-A7, Ext. PW-A8, Ext. PW-A9 and Ext. PW-A10. He also produced receipt Ext. PW-A11 and Ext. PW-A12. He has brought on record copy of demand notice Ext. Ext. PW-A13 and copy of rejoinder to demand notice Ext. PW-A14. The contention of the petitioner that he was an employee of the respondent is proved from the demand notice before the Labour Officer, where his status has not been disputed. The copy of the receipt also points towards the same facts. The averments made in the claim petitioner and the reference regarding the termination of service of the petitioner by the respondent do not stand rebutted as no reply has been filed by the respondent. The deposition of the petitioner is uncontroverted and it is proved that the petitioner was employee of the respondent whose services were transferred to Una and later terminated without mandatory compliance with the provision of Section 25-F of the Industrial Disputes Act, 1947. There is

nothing on record to show that before terminating service of the petitioner the respondent had made full and final payment and complied with the mandatory provisions of the Act.

8. In these circumstances, the claim of the petitioner is allowed and termination order dated 03.08.2020 as well as transfer order dated 01.08.2020 are set-aside. The respondent is directed to reinstate the petitioner on the post held by him at the time his transfer/termination. The respondent has violated the provisions of Industrial Disputes Act, 1947. In these circumstances, the petitioner is also entitled lump-sum compensation of Rs.50,000/-.

9. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 05/2024

Date of Institution : 06.3.2024

Date of Decision : 28.8.2025

Shri Jiwa Ram s/o Shri Amar Singh, r/o Village Tung Batahlari, P.O. Bahanu, Tehsil Baldwara, District Mandi, H.P. . . *Petitioner.*

Versus

The Managing Director/Employer, M/s Hi Tech. Satluj Motors Private Limited, Lunapani, P.O. Bangrutu, Tehsil Balh, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Ms. Vijay Bhandari, Ld. Adv.

For Respondent : Already exparte

AWARD

The following industrial disputes have been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:—

"Whether the termination of services of Shri Jiwa Ram s/o Shri Amar Singh, r/o Tung Batahlari, P.O. Bahanu, Tehsil Baldwara, District Mandi, H.P. by the Managing Director/

Employer, M/S Hi Tech Satluj Motors Private Limited, Lunapani, P.O. Bangrutu, Tehsil Balh, District Mandi, H.P. *w.e.f.* 25-07-2020 (as alleged by workman) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the applicant was engaged on 1st November, 2005 as regular employee on daily wage basis by the respondent and later transferred to Rani ground workshop and thereafter to Lunapani. It is asserted that the applicant last received salary upto 26th July, 2020 and was transferred to V.G. Automobiles, Una without any prior termination letter of formal transfer order or with the consent. No notice or show cause was given prior to this transfer and the services were terminated without any cause in July, 2020. It is asserted that salary was paid for April, 2020 and as such only 50% was paid for March and May, 2020 and June salary was delayed and paid only 15%. During May 2020 company had instructed the applicant to work from 9 AM to 9 PM under lockdown and yet paid only 50% partial salary and no additional benefit. The petitioner had not received any salary hike or increment @ 10% per year for the last three years as well as denied gratuity benefits amounting to Rs.1,15,000/-. After EFP deduction from 2007 the total contribution till 2020 discrepancies and proper statements were not shared with the applicant. It is asserted that the applicant attended multiple training programme organized by TATA Motors including online daily basis training from 23.3.2020 to 3.5.2020 during Covid lockdown and no hike or benefit was granted post training despite assurance. It is asserted that the applicant's salary began with Rs. 3600/- and increased to Rs. 13,000/- till 2020 but the same does not match the standard increment policies of the organization. The applicant had completed 240 days of service in each calendar year from 2005 to 2020 and fulfilled all eligible criteria under the Industrial Disputes Act. It is alleged that the deduction were made arbitrarily from time to time without written warning or notice. No show cause notice or proper documentation as provided before halting EPF or transferring the employee. It is prayed that termination or transfer order dated 26.7.2020 may be declared as illegal, null and void and respondent be directed to settle all dues.

3. It is pertinent to mention here that the respondent was proceeded ex parte on 07.4.2025 as he failed to appear despite service.

4. In order to prove his case the applicant has produced on record his affidavit Ext. PW1/A and documents i.e. receipt dated 11.9.2008 Ext. PW-A2, Training course dated 21.3.2015 Ext. PW-A3, training course dated 19.5.2010 Ext. PW-A4, training course dated 14.7.2015 Ext. PW-A5, copy of statement of account Ext. PW-A6 and certificate dated 10.8.2020 Ext. PW-A7.

5. I have heard the learned Counsel for petitioner at length and records perused.

6. The petitioner had mentioned in his affidavit that he was engaged on 1st November, 2005 as Regular Employee on daily wage basis at M/S Hi-Tech Satluj Motors Pvt. Ltd. in the Mandi Branch and later transferred to Rani ground workshop thereafter to Lunapani. He was paid last salary up to 26.07.2020 and was transferred to V.G. Automobiles, Una without any prior termination letter or formal transfer order with his consent. No proper notice or show cause notice was given to the petitioner prior to transfer and his service was effectively terminated without show cause in July, 2020. No EPF contribution was made after February, 2020 and salary was not paid as per rule by the 7th of every month. It is submitted in his affidavit that no salary was paid for April, 2020, only 50 % was paid for March and May, 2020 and salary for the month of June was delayed and paid only at the rate of 15%. During May, 2020 the respondent company instructed the petitioner to work from 9 am to 9 pm under lockdown, but paid only partial salary (50%) and no additional benefit was given. It is asserted that petitioner did not receive any salary hike or

increment @ 10% per annum for the last three years. After EPF deduction from 2007 the total contribution till 2020 has discrepancies and proper statements were not shared with the petitioner.The petitioner attended multiple training programmes organized by TATA Motors including online daily basis training from 23.03.2020 to 03.05.2020 during Covid lockdown but no hike or benefit was granted despite assurances. It is asserted that the salary of petitioner had begin with Rs.3600/- per month and had increased up to Rs. 13,000/- till 2020 but did not match with the standard increment policies of the organization. The petitioner asserted that he was completed 240 days in each calendar year from 2005 to 2020 and fulfilled all eligibility criteria under the Industrial Disputes Act. The deductions were made arbitrarily from time to time without written warning or notice. It is submitted that no show cause notice or proper documentation was provided before halting EPF or transferring the employee. He was paid regular monthly wages of Rs.15430/- per month of July, 2020. The petitioner has worked as a Technician + Mechanic from 02.08.2005 to 26.07.2020 under the supervision of the respondent. He was deprived EPF along-with interest and hike salary due from the year, 2005 to 2020. The respondent contested the conciliation proceeding before the Labour Officer, Mandi consequent to which the present reference was made to this Court. It is alleged that the respondents have sufficient work and finance but not settled the genuine claim of the petitioner. The petitioner asserted that he was completed 240 days in each calendar year from 2005 to 2020. The petitioner prayed that the termination or transfer order dated 26.07.2020 may be set aside and petitioner be held entitled for his claim along-with interest. He has also prayed for recovery of final amount of four month salary along-with interest, gratuity, increment dues and other relief.

7. The oral evidence produced by the petitioner has remained un-rebutted as respondent failed to contest the claim filed by the petitioner. The petitioner has produced his affidavit Ext. PW1/A along-with documents *i.e.* receipt dated 11.9.2008 Ext. PW-A2, Training course dated 21.3.2015 Ext. PW-A3, training course dated 19.5.2010 Ext. PW-A4, training course dated 14.7.2015 Ext. PW-A5, copy of statement of account Ext. PW-A6 and certificate dated 10.8.2020 Ext. PW-A7. The contention of the petitioner that he was an employee of the respondent is proved from the certificate issued by the respondent dated 10.08.2020 Ext.PW-A7. The averments made in the claim petitioner and the reference regarding the termination of service of the petitioner by the respondent do not stand rebutted as no reply has been filed by the respondent. The deposition of the petitioner is uncontroverted and it is proved that the petitioner was employee of the respondent whose services were transferred to V.G. Automobiles, Una and later terminated without mandatory compliance with the provision of Section 25-F of the Industrial Disputes Act, 1947. There is nothing on record to show that before terminating service of the petitioner the respondent had made full and final payment and complied with the mandatory provisions of the Act.

8. In these circumstances, the claim of the petitioner is allowed and termination as well as transfer order dated 26.07.2020 are set-aside. The respondent is directed to reinstate the petitioner on the post held by him at the time his transfer/termination. The respondent has violated the provisions of Industrial Disputes Act, 1947. In these circumstances, the petitioner is also entitled lump-sum compensation of Rs. 50,000/-.

9. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 103/2021

Date of Institution : 16.9.2021

Date of Decision : 28.8.2025

Shri Pawan Kumar s/o Shri Jeet Singh, r/o Village Chatrer, Tehsil Shahpur, District Kangra, H.P. . . *Petitioner.*

Versus

1. The Executive Engineer, Jal Shakti Vibhag, Dharamshala Division, District Kangra, H.P. (Principal Employer).

2. The Director, M/s Rebound Enviro Tech. Private Limited, 27/6, Jagriti Vihar, Meerut, U.P. (Contractor) . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Smt. Pabna Sharma, Ld. Legal Aid Counsel

For Respondent No. 1 : Sh. B.C. Katoch, Ld. Dy. D.A.

For Respondent No. 2 : Sh. Ankur Soni, Ld. Adv.

AWARD

The following reference has been received by this court for adjudication from the appropriate Authority/Joint Labour Commissioner:

> "Whether the termination of services of Shri Pawan Kumar s/o Shri Jeet Singh, r/o Village Chatrer, Tehsil Shahpur, District Kangra, H.P. *w.e.f.* March, 2020 by (i) the Executive Engineer, Jal Shakti Vibhag, Dharamshala Division, District Kangra, H.P. (Principal Employer) (ii) the Director, M/S Rebound Enviro Tech. Private Limited, 27/6, Jagriti Vihar, Meerut, U.P. (Contractor), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/ management?"

2. The brief facts as stated in the claim petition are that the petitioner was appointed and worked as mechanic, operator, helper and supervisor with the respondents since the year 2009 doing the work of repair and operate the sewerage plant. According to petitioner he was hard worker and was never given any break in his services and thus worked continuously. In September, 2016 the respondent no. 2 got contract and petitioner continued working under respondent no. 2. It is alleged that respondent no. 2 paid comparatively less salary to the tune of Rs. 6900/- per month only a period of four months till 2020. Even though other similar workers junior to him were being paid @ Rs.7600/- per month. He was made to do work of multipurpose of supervisor mechanic, electrician, helper and operator on the sewerage plant. His work was always found satisfactory and

no departmental inquiry was ever conducted against him. It is alleged that on 21.3.2020 he was telephonically informed by respondent no. 2 that he need not to come to job any longer. Petitioner has asserted that he had completed 240 days of work in every calendar year of his engagement with the respondents and thus act of termination on the part of the respondents was unfair, unjust, illegal, arbitrary and malafide. He has alleged that the respondents terminated his services in the month of March, 2020 and thereafter he continuously kept on visiting the office of the respondent however he was not provided any work. From the date of his disengagement he was not able to engage in any gainful employment and due to his termination his family members led miserable life. Petitioner has also alleged that respondents had violated the principle of 'last come first go' and the provisions of Section 25 Clause F and G of the Industrial Disputes Act. He has also alleged that respondents had denied his fundamental rights and violated the provisions of Article 14 and 16 of the Constitution of India. Petitioner has prayed that his unlawful termination dated 21.3.2020 may be set aside and respondents be directed to reinstate his services with seniority and continuity of service and all consequential benefits.

3. In reply on behalf of respondent no.1 *i.e.* Jal Shakti Vibhag, Dharamshala preliminary objections qua maintainability, locus standi, suppression of material facts etc. have been raised. On merits, it is asserted that petitioner was never appointed by respondent no.1 infact he was engaged by private respondent no. 2 in the scheme for maintenance of sewerage system town in Tehsil Dharamshala which work was awarded to respondent no. 2 by respondent no.1 by different award letters which are produced on record. It is also asserted that since the petitioner was appointed by private respondent no. 2 he was worker/employee of respondent no.2 for all intends and purposes and he was solely responsible for any dispute raised between them. Other averments made in the petition have been denied and it is prayed that the claim may be dismissed against respondent no.1.

4. In reply on behalf of respondent no. 2 preliminary objections qua maintainability, locus standi, cause of action, suppression of material facts have been raised. On merits, it is denied that petitioner was appointed and worked as mechanic, operator, helper and supervisor with the respondent since 2009. It is also denied that petitioner was hard worker and he was never given any break in service. Respondent no. 2 asserted that the petitioner started work with respondent after the award of tender in the year 2016. It is mentioned here that the petitioner had joined the work with respondent no. 2 as helper. It is denied that he was being paid comparatively less salary to the tune of Rs. 6900/-. It is asserted that as per government norms replying respondent paid salary and basic pay of Rs.4225/-, DA paid to petitioner was Rs. 2275/-, HR Rs. 325/-, Bonus Rs. 541, Allowance Rs. 314 and PF paid by the employer Rs.780/- hence net payable of Rs.7680/-. It is denied that petitioner was doing the multiple work of supervisor, mechanic, electrician, helper and operator on the sewerage plant and it is asserted that he was merely working as helper. It is denied that all of sudden the petitioner was telephonically informed by respondents on 21.3.2020 that he need not to come for his job any longer. It is however asserted that the petitioner as well as other employees were assured that they will be provided emergency cards and STP operation are not affected in order to avoid any bacterial contamination. The officials had asked the petitioner to continue the work but petitioner did not join his services. The respondent tried to contact with the petitioner but all in vain. It is alleged that petitioner had absented himself from job for 8 months ignoring the call of the respondent in violation of service rules. Respondents have denied that petitioner had completed 240 days of work in each calendar year. Other averments made in the petition have also been denied and it is prayed that petition deserves to be dismissed.

5. In separate rejoinders to the reply filed on behalf of respondents preliminary objections have been denied and facts stated in the petition are reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the services of the petitioner were illegally terminated by the respondents *w.e.f.* March, 2020, as alleged? . . *OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as claimed? . . *OPP.*

3. Whether there is no relationship of employer and employee between the petitioner and the respondent No.1, as alleged? . . *OPR.*

4. Whether the petitioner has no locus standi to file the present petition against the respondents as alleged? . . *OPR2.*

5. Whether the petitioner has suppressed material facts and has not come to the court with clean hands, as alleged? . . *OPR.*

6. Relief

7. Petitioner in order to prove his case has produced on record his affidavit PW1/A wherein he has reiterated the facts as stated in the claim petition and also produced on record copy of statement of account Ext.P-1, copy of ID Card Ext. P-2, copy of bank statement for the year 2016 to 2020 Ext. P3, notice dated 23.11.2020 Ext. P4, copy of notice dated 3.12.2020 Ext. P5, notice dated 14.12.2020 Ext. P6, Notification dated 5.8.2021 Ext. P7, copy of notification dated 6.8.2019 regarding minimum wages Mark-X and copy of PF detail of petitioner Mark-Y. Petitioner has also examined Shri Vijay Kumar who has produced account statement *w.e.f.* 1.9.2016 to 31.12.2020 Ext. PW2/A. PW3 Shri Sanjay Kumar has stated on oath that petitioner had worked with respondents from 2016 to 2020 in sewerage plant. He was also working along-with petitioner as pump operator, mechanic, supervisor. Earlier both of them worked with Mahabal company who had been granted tender for sewerage plant to respondent no. 2. Prior to respondent no. 2 they worked with respondent for almost four years and instead of the monthly salary of Rs. 7600/- they were being paid only Rs.6900/- for continuously for four years. Whenever the petitioner had requested for payment of his salary as per minimum wages he was assured that it would be adjusted in the next payment. Respondents were not giving correct information to the petitioner regarding his PF account. The petitioner was not able to join duty due to corona pandemic as he did not have any vehicle to reach his place of work. He was informed by Manager of respondent no. 2 on telephone that his services were no more required.

8. Respondent no.1 has examined Sumit Vimal Katoch, Executive Engineer, Jal Shakti Division, Dharamshala by way of affidavit Ext. RW1/A wherein he has reiterated the facts as stated in the reply. He has produced on record copy of release order of classified advertisement Ext. RW1/B, copy of notice inviting tender Ext. RW1/C, copy of award letter dated 3.6.2016 Ext. RW1/D, copy of letter dated 3.6.2016 Ext. RW1/E, copy of tender detail dated 19.6.2017 Ext. RW1/F, copy of award letter dated 1.9.2017 Ext. RW1/G, copy of award letter dated 1.9.2017 Ext. RW1/H, copy of technical open bid Ext. RW1/J, copy of award letter dated 12.9.2019 Ext. RW1/K, copy of bill for the year 2021-22 Ext. RW1/L and closed the evidence on behalf of respondent no. 1. Respondent no. 2 has examined Shri Dinesh Kumar, Director M/s Rebound Enviro Tech. Pvt. Ltd. by way of affidavit Ext. RW2/A and closed the evidence on behalf of respondent no. 2.

9. I have heard the learned Legal Aid Counsel for the petitioner as well as learned Counsel for respondents at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1 : Partly Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : Yes

Issue No. 4 : No

Issue No. 5 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

11. Petitioner Pawan Kumar has stated on oath that he had worked in sewerage plant from the year 2009 to 2020 continuously as mechanic, pump operator, helper and supervisor. PW3 Shri Sanjay Kumar has also stated in the similar manner in his affidavit produced before this court. These witnesses have also stated that in the year 2009 the tender for the management of sewerage plant was awarded Mahabal company and in the year 2016 the tender was given to present respondent no.2. They continuously worked with respondent no.2 from 2016 till the year 2020. The petitioner in his cross-examination has stated that after 2018-19 the tender for the work of sewerage plant has been awarded to respondent no. 2 and from the year 2009 to 2016 he had worked under Mahabal company. He has admitted that he has received (PF) amount of which was deposited by Mahabal company. He has admitted that later on he was kept on work by respondent no. 2. He has admitted that it was the duty of respondent no. 2 to allot PF account in his favour. He has very clearly admitted that he has not been disengaged or terminated by respondent no.1 but by respondent no. 2. He has reiterating during course of cross-examination that there is no role of respondent no.1 in termination of his services. He has admitted that tender was awarded to the present respondent no.2 in the year 2016. He has however denied that he was being paid basic pay of Rs. 4225/-, DA Rs.2275/-, HRA 325/-, Bonus 541/-, allowances 314/- and PF contribution on behalf of employer. He has denied that during corona pandemic he was telephoned by respondent no. 2 to join his service as passes for emergency service will be procured for the purpose of work. He asserts that despite request he was not allowed to join his duty. He has admitted that he has received payment which was due towards him prior to his disengagement. He has further denied that he was getting wages as per Minimum Wages Act. PW3 Shri Sanjay Kumar in his cross-examination has admitted that the respondent no.2 had requested the petitioner to join his duty however petitioner did not join but subsequently he has clarified that he did not have any knowledge about these facts. He admits in his cross-examination that the petitioner was engaged through private respondent no.2 and also admits that all the payment was being made to him by contractor. He as well as petitioner were employed by contractor who was awarded the tender by respondent no.1. He also admits that every appointment in government department is by way of process and in his appointment as well as in the appointment of the petitioner no process was followed. He as well as petitioner Pawan Kumar have clearly stated that there was no role of respondent no.1 in terminating the services of the petitioner. Though they have stated that the petitioner was working under the control and supervision of respondent however it is clearly mentioned in the pleadings as well as the evidence produced by the petitioner that he (petitioner) was being paid salary by respondent no. 2 and it is alleged that the services of the petitioner was dispensed with at the instance of respondent no. 2 only.

12. RW1 Shri Sumeet Vimal Katoch, Executive Engineer, Jal Shakti Vibhag, Dharamshal has also produced the documents pertaining to the various tenders which have been awarded to

respondent no. 2 from the year 2016 which clearly shows that the petitioner was being appointed by contractor who was given fixed term tender for operation of sewerage plant by respondent no.1. Respondent no. 2 has examined Shri Dinesh Kumar who is Director of M/s Rebound Enviro Tech. Pvt. Ltd.. He has admitted that Jal Shakti department executes the work of sewerage management from M/s Rebound Enviro Pvt. Ltd. This tender was awarded to them in the year 2016 and since then they are continuously looking after the management of sewerage plant. He admits that petitioner was working in their company and petitioner was hired by their company. He admits that petitioner has worked from the year 2016 to 2020 in their company. He asserts that petitioner was merely working as helper-cum-sewer man. He however admits that petitioner was employed on full time basis. He admits that the salary of the petitioner was being paid in his account which was Rs.6900/- per month. He however denied that petitioner was being paid less than minimum wages. He also denied that they assured to adjust the remaining amount in subsequent months. He also denied that PF instalment of the petitioner has not been deposited. He however very clearly stated that the petitioner had continuously worked with respondent no. 2 for four years and during these period no complaint regarding the work of petitioner ever received by them subsequently he has mentioned about certain oral complaint however no written document in such complaint is produced on record by the respondents. In his cross-examination he has denied that he has ever given mandatory notice to the petitioner though he admits that at the time of corona pandemic there was complete lockdown and public transport was shut. He denies that after the leaving of lockdown the petitioner had approached him for the work and he refused to give work to him. He denies that on notice of the conciliation officer they had failed to appear before the conciliation officer. He denied that the services of the petitioner were wrongly terminated and he was being paid salary less minimum wages fixed by the government during four years of his services.

13. It is submitted by the learned counsel for the petitioner that the statement of RW2 Shri Dinesh Kumar very clearly shows that petitioner had worked with respondent no. 2 from the year 2016 till 2020 continuously hence the contention of the respondents in their pleadings and affidavits that petitioner had not completed 240 days of continuous work do not appear to be logical. It is pertinent to mention here that the petitioner himself has admitted that respondent no.1 did not have any role to play in termination/disengagement of his services. Except the plea of the supervision on the part of the officials of respondent no.1 there is no other criteria which would points towards employer employee relationship between the petitioner and respondent no.1. The earlier tenders which have been awarded to different companies including respondent no. 2 have been produced on record by respondent no.1 in the present case. The statement of the witnesses produced by the petitioner as well as the respondent no. 2 clearly shows that there was master servant relationship between the respondent no. 2 and petitioner. The salary of the petitioner was being paid by respondent no. 2 only. The evidence produced on record clearly shows the continuous service of the petitioner for the period of more than 240 days prior to his alleged termination by respondent no.2. RW2 Shri Dinesh Kumar has denied that any monthly notice was ever given to the petitioner to join his service. On the one hand respondents have asserted that petitioner has absented from his work in violation of the service rules and abandoned his job at the crucial time of lockdown however it is clear that respondents have not followed the procedure essential for dispensing with the services of the petitioner in case of alleged abandonment. It is however established that they have not followed the mandatory Section of 25 Clause F of the Industrial Disputes Act at the time of termination of the services of the petitioner. It is also clear from the evidence from the case file and that respondents have employed other workers on the post which was being held by petitioner during year 2020. There is no documentary evidence to prove the voluntarily abandonment of services by the petitioner. Thus it is established from the oral as well as documentary evidence that respondent no. 2 had terminated the services of the petitioner in violation of the mandatory provisions of Section 25 Clause F of the Inhdustrial Disputes Act, 1947. Hence issue no.1 is partly decided in the favour of the petitioner.

Issue No. 2

14. It is submitted by petitioner in his cross-examination that he had worked with respondent since the year 2009. It is however revealed from the statement of witnesses as well as petitioner's evidence that from 2009 till 2016 the petitioner was working under Mahabal company who was looking after the work of management of sewerage plant. Subsequently the respondent no. 2 was awarded the tender by respondent no.1. The services of petitioner were now engaged by respondent no. 2 and he continuously worked with the respondent no. 2 In March 2020 he was terminated illegally from his services by respondent no. 2 without mandatory compliance of the provisions of the Industrial Disputes Act. There is no specific reference made to this court with regard to the payment of less than minimum wages by the respondent no. 2. It is clear from the statement of bank account produced before this court that petitioner was received Rs. 6900/- at the time of alleged disengagement. It is not denied and infact asserted by respondent no.2 that the PF contribution of the petitioner was also being paid by respondent no.2. Learned counsel for the petitioner has submitted that petitioner has not able to access PF account due to wrong tin number being provided by respondent no. 2. In these peculiar circumstances of the case and considering the facts the petitioner was wrongly terminated from his services, petitioner is reinstated to his service along-with seniority and continuity in service from the date of his initial engagement with respondent no. 2. He is also entitled to compensation to the tune of Rs. 50.000/- in lieu of back wages. In addition to it respondent no. 2 is directed to provide correct particulars of PF account of the petitioner so that the petitioner can access the amount deposited by the petitioner during the period of his services. Issue no. 2 is accordingly decided in the favour of the petitioner.

Issue No. 3

15. It has been discussed in detail while deciding issue no.1 above that there is no relationship of employee and employer between petitioner and respondent no.1 and it is admitted by the petitioner that he was employed, paid salary and terminated by the respondent no. 2 only. Accordingly this issue is decided in the favour of the respondent no.1.

Issues No. 4 and 5

16. The onus of proving these issues on the respondents. Respondent no. 2 has failed to establish that termination of the services of petitioner was in accordance with the provisions of the Industrial Disputes Act and the allegations of abandonment did not stand establish from the oral and the documentary evidence hence issues no. 4 and 5 are decided in the favour of the petitioner.

Relief

17. In view of my discussion on the issues no. 1, 2, 4 and 5 above, the claim petition succeeds and is partly allowed. The petitioner is reinstated to his service along-with seniority and continuity in service from the date of his initial engagement with respondent no. 2. He is also entitled to compensation to the tune of Rs. 50.000/- in lieu of back wages. In addition to it respondent no. 2 is directed to provide correct particulars of the PF account of the petitioner so that the petitioner can access the amount deposited by the petitioner during the period of his services. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 84/2022

Date of Institution : 15.7.2022

Date of Decision : 28.08.2025

Smt. Maya Devi w/o Shri Hans Ram and Smt. Kiran Bala w/o Shri Rajesh Sharma through Shri Rakesh Sharma, State President (BMS), Ward No.9, Near Geeta Bhawan, Municipal Committee, Santoshgarh, Tehsil & District Una, H.P. . . *Petitioners.*

Versus

1. The Executive Director (Personnel), H.P. State Electricity Board Limited, Vidyut Bhawan, Kumar House, Shimla.

2. The Senior Executive Engineer, Electrical System Division, H.P.S.E.B.L., Rakkar, Una, District Una, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner(s) : Sh. N.L. Kaundal, Ld. AR

For the Respondent(s) : Sh. Sandeep Thakur, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner.

> "Whether the demand of Smt. Maya Devi w/o Shri Hans Ram and Smt. Kiran Bala w/o Shri Rajesh Sharma through Shri Rakesh Sharma, State President (BMS), Ward No.9, Near Geeta Bhawan, Municipal Committee, Santoshgarh, Tehsil & District Una, H.P. regarding regularization of their services raised vide demand notice dated 31-07-2020 (as alleged by workman) to be fulfilled by (i) the Executive Director (Personnel), H.P. State Electricity Board Limited, Vidyut Bhawan, Kumar House, Shimla (ii) the Senior Executive Engineer, Electrical System Division, H.P.S.E.B.L., Rakkar, Una, District Una, H.P., is legal and justified? If yes to what relief service benefits above workmen are entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that the petitioners were appointed as typist-*cum*-clerk on 24.11.2000 and 8.4.2005 by the Senior Executive Engineer, Electrical Division, HPSEB Ltd., Rakkar, Una, District Una, H.P. It is asserted that during the period of services of workmen from their initial engagement upto 2012 the work and conduct of the petitioners were fully satisfactory and upto the mark and they have not given any chance to their superior as well as Senior Executive Engineer, Electrical Division, HPSEBL Rakkar, Una for any alleged misconduct on the part of the workmen. They have not served any show cause notice as well as charge sheet against their misconduct. It is submitted that both the workmen had continuously worked under the supervision and control of the respondent no. 2 and they were assigned the duties of typist-cum-clerk every day except holidays. Petitioners have discharged their duties in every day from 10AM to 5 PM. It is submitted that similar situated workmen namely Smt. Veena Kumari w/o Sh. Rattan Lal, Minta Ram s/o Sh. Rattan Chand, Beli Ram s/o Sh. Vir Singh, Trishla Devi d/o Sh. Duni Chand, Dinesh Sharma s/o Sh. Lalit Sharma etc. had worked in the capacity of clerk in various offices of the respondents and all the above workmen including the petitioners had working in the capacity of typist-*cum*-clerk with prior sanctioned/approval of respondent no.1. Thereafter Veena Kumari, Minta Ram, Trishla Devi, Dinesh Sharma and Smt. Ashoka Devi had approached the Hon'ble High Court of H.P. by way of Civil Writ Petitions and the same was decided in a common judgment by the Hon'ble High Court. It is submitted that Special Leave Petition against the aforesaid judgment dated 10.7.2008 in WA No. 627 of 2008 was also dismissed by the Hon'ble Apex Court *vide* order dated 12.3.2010. In view of the above facts the cases of the petitioners covered under the aforesaid judgment dated 10.7.2009 in WA No.627 of 2008 as upheld by the Hon'ble Supreme Court in SLP (Civil) No. 23872/2008. It is asserted that the petitioners have also approached the Hon'ble High Court and filed a joint Writ Petition No. 7847 of 2013 and the same was transferred to Himachal Pradesh Administrative Tribunal and was registered as T.A. No. 5487/2015 titled as Smt. Kiran Bala and others wherein both the workmen seeking relief of regularization as per judgment granted by Hon'ble High Court in Veena Devi's case. It is submitted that the H.P. Administrative Tribunal had decided the T.A. No. 5487/2015 on 12.5.2016 in the favour of the petitioners. It is asserted that on the basis of direction passed by the Hon'ble Tribunal in TA No.5487/2015 the workmen had submitted the copy of judgment along-with representation dated 19.5.2016 to the department to consider their case for regularization on the basis of judgment rendered by Hon'ble High Court of H.P. in CWP No.6690/2010 but of no avail. It is alleged that during the pendency of the industrial dispute before the labour authority the services of the petitioners were unlawfully terminated by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 as well as the department had not obtained prior permission from the competent authority under Section 33-2(b) of the Industrial Disputes Act. It is submitted that from the date of termination of the services of the petitioners they are still unemployed and not gainfully employed anywhere. It is asserted that the petitioners are entitled for their regularization on regular pay scale in the capacity of clerk-cum-typist against the vacant post as per regularization of workmen mentioned in para no.3 of the claim peititon. It is submitted that the respondents had appointed and filled up the vacancies of clerks in various office of the respondents on work order basis just to deprive the fundamental rights of regularization of the petitioners as per policy of State Government applicable to the respondents boards and act of the respondents was unfair labour practice within the meaning of Section 2 (ra) read schedule 5 Clause 10 of the Industrial Disputes Act, 1947. The act of the Electricity Board not to regularize the services of the petitioners was unfair labour practice and deprived them for their permanent status was highly unjustified, arbitrary and the petitioners are entitled for their regularization from the date they had completed 8 years of services or from the date of persons as like Grish Kapoor & others in the post of clerk in regular pay scale and also entitled to all arrears and other consequential benefits along-with interest @ 12% per year to each workman in the interest of justice. It is therefore prayed that in view of aforesaid submissions, the claim of the petitioners may be allowed and the respondents may be directed to regularize their services after completion of 8 years of services or from the date of person as like Grish Kapoor and others and unlawful termination for the petitioners may be set aside and the

respondents may be directed to reinstate the services of petitioners with full back wages, seniority, continuity in service with all consequential service benefits along-with 12% interest as well as litigation costs of Rs. 5000/-.

3. In reply to the claim petition on behalf of the respondents no.1 and 2 preliminary objection qua maintainability has been raised. On merits, it is specifically denied that petitioners were ever appointed as Typist-cum-Clerk by the respondents/HPSEB Ltd. as alleged by the petitioners. It is mentioned here that in the year 2000 quotations were called for typing work from local firms and in response to the same Smt. Maya Devi had given quotation which was considered on 8.11.2000 and the type work was award to her for a specific period. Similarly in the year 2005 Smt. Kiran Bala gave quotation for typing work which was considered on 7.5.2005 and typing work was awarded to her for a specific period. It is denied that the Smt. Maya Devi was appointed as typist-cum-clerk *w.e.f.* 24.11.2000. It is also denied that Smt. Kiran Bala was appointed as typist-*cum*-clerk *w.e.f.* 8.4.2005 however they (petitioners) never joined the HPSEBL in the capacity of employee/workmen/labourer at any point of time and there existed no relation of employer or employee/workmen between the petitioners and the replying respondents. It is admitted that in the year 2013 CWP No. 7847/2013 was filed by the petitioners before the Hon'ble High Court of H.P. and the same was ordered to be transferred to Hon'ble H.P. Administrative Tribunal as T.A. No. 5487/2015 but no relief was granted in the favour of the petitioners and the replying respondent was directed to consider the claim of the petitioners on the analogy of CWP No. 6690 of 2010 and finally their claim was rejected by the HPSEBL by passing well reasoned speaking order dated 17.10.2016. It is admitted that the conduct of the petitioners were upto the mark but it is denied that they were appointed as workmen or employee. It is submitted that they had rendered the work against their quotations for specific work and work order was awarded from time to time. It is asserted that the petitioners never worked as regular employee or contractual employee of the HPSEB Ltd. It is denied that the petitioners were under the control of respondent no.2 as their employee since they only performed the work as per work order assigned to them. It is asserted that in the case of the petitioners the quotation were invited from open market/typist or typing centres from time to time for providing typist who were conversant with typing work. It was submitted that there was no relationship of the employer and employee in between the petitioners and replying respondents since the services of the petitioners were hired on work order basis, the present dispute is not in the form of industrial/labour dispute as the services of the petitioners were not engaged by the replying respondents as per R&P Regulations and they cannot claim regularization of their services at par with the persons who were engaged by the respondents on account of direction of the Hon'ble HP High Court. However it is asserted that the facts of cases of particular persons mentioned in para no. 4 of the petition were entirely different and distinct from the facts of the present case. The HPSB Ltd. is a statutory body which can sue and can be sued in its own name. The Hon'ble Apex Court has laid down that no court has jurisdiction to direct the board to regularize the services of any person who was not initially engaged and appointed in accordance with Recruitment and Promotions Rules. The order of Hon'ble Tribunal dated 29.6.2001 was ordered to be set aside and in some case it was opined by the Hon'ble Court that the matter may be placed before the Board of Directors of HPSEB Ltd. who on their own should be considered the case of regularization of services in a special case with sympathetic view. It is crystal clear that the services of the petitioner were hired by the respondents on work order basis by inviting limited quotations on the specified rates subject to certain terms and conditions and dispute if any also governed under the provisions of the Contract Act, 1872 and there was no relationship of employee and employer between the parties. It is denied that the demand raised by the petitioners by way of notice dated 31.7.2020 was frivolous and baseless. No work was assigned to Smt. Kiran Bala after 31.8.2014 and to Smt. Maya Devi after 31.8.2016. It is denied that the petitioners were unlawfully terminated by the respondent no.2/HPSEB Ltd. during the pendency of the alleged industrial dispute without complying with the Industrial Disputes Act and the petitioners do not fall within

the definition of workmen nor have any industrial dispute arose in between the parties. Other averments made in the petition are denied and it is prayed that the petition deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the demand raised by the petitioners regarding regularization of their services vide demand notice dated 31.7.2020 is/was legal and justified, as alleged? . . *OPP.*

(as amended)

2. Whether the petitioners are entitled for the reliefs arising out of demand, as claimed? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . *OPR.*

4. Whether there is no relationship of master and servant between the petitioners and respondent, as alleged. If so, its effect? . . *OPR.*

5. Relief

6. Petitioner Smt. Maya Devi in order to prove her case has produced on record her affidavit PW1/A. She has also produced on record copy of judgment dated 4.1.2013 Ext. PW1/B, copy of judgment dated 12.5.2016 Ext. PW1/C, copy of judgment dated 6.3.2020 Ext. PW1/D, copy of demand notice dated 31.7.2020 Ext. PW1/E, copy of reply to demand notice dated 22.12.2020 Ext. PW1/F and copy of letter dated 4.8.2020 Ext. PW1/G. Petitioner Smt. Kiran Bala in order to prove her case has produced on record her affidavit Ext. PW2/A.

7. Respondents on the other hand has examined Er. Megha Rana as RW1 by way of affidavit Ext. RW1/A. She has also produced on record documents Mark-A to Mark-J.

8. I have heard the learned AR for the petitioner as well as learned Counsel for respondents at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2

10. Both these issues shall be taken up together for the purpose of adjudication.

11. The petitioners had made demand of their regularization on the basis of continuous service. PW1 Smt. Maya Devi has deposed that she had worked as typist-cum-clerk on piece rate basis from 24.11.2000 till the year 2020. Similar terms Smt. Kiran Bala has also deposed that she worked as typist-cum-clerk from 8.4.2005 till the year 2020. Respondents have examined RW1 Sr. Executive Engineer Ms. Megha Rana, HPSEBL who has denied that the petitioner was appointed as clerk-*cum*-typist with the respondent. She has however mentioned that in the year 2000 quotations were called for typing work from local firms and in response to which Smt. Maya Devi gave quotation which was considered on 8.11.2000 and typing work was awarded to her for a specific period. On similar terms the typing work was awarded to Smt. Kiran Bala *w.e.f.* 8.4.2005 It is also asserted that no work was assigned to Smt. Kiran Bala after 31.8.2014 and Smt. Maya Devi after 31.8.2016. RW1 Smt. Megha Rana has denied that the petitioners working in the capacity of clerk but she self stated that they were working on quotation basis. Respondents have however denied the employer employee relationship with the petitioners and it is asserted that the petitioners worked only on quotation basis. Respondents however have not explicitly denied that petitioners had worked continuously with the respondents for long period of time. The petitioners are asserting their employment with the respondents till the year 2020. According to respondents the petitioners no.1 and 2 worked till the year 2016 and 2014 respectively. It is argued by learned counsel for the respondents that petitioners have not been appointed as per R&P Rules and regulations process of selection. He further submits that there is no documentary proof of the appointment of the petitioners. The work was obtained from the petitioners on the basis of work order and any contractual appointment ends with the contract itself. Such temporary employees cannot claim to be made permanent. A regular appointment cannot be made on a post under the State or Union without issuing advertisement in the prescribed manner and without a proper selection procedure. Learned counsel for the respondents has relied upon the findings of the Hon'ble Apex Court in **The Secretary, State of Karnataka and Ors. vs. Umadevi (3) & Ors. 2006 (4) SCC 1** and also the similar findings of the Hon'ble Supreme Court in **Union of India & Ors. vs. ILMO DEVI & Anr., (2021) SCC Online 899.**

12. Perusal of the case file also shows that the case of petitioners on the basis of precedent laid down by Hon'ble Supreme Court and their representation was disallowed by respondent department.

13. Learned Counsel for the petitioners has however vehemently argued that the respondents have availed the services of the petitioners no.1 and 2 for more than 11 years and 8 years respectively. The nature of work was performed by petitioners by perennial work which was not limited to a particular brief period. Petitioners continued to perform duty regularly and both the petitioners have also deposed that they worked on piece rate basis but they performed work every day from 9 AM to 5 PM and they also worked on Sundays. No attendance record of the petitioners had produced on record by the respondents however it is not expressly denied that petitioners have performed continuous service for years altogether though on work order basis. RW1 Smt. Megha Rana has expressed ignorance to the suggestion that HPSEBL has nowhere provided for work on quotation/work order basis. She admits that they have not produced any circular issued by the Secretary HPSEBL and Director Personnel, HPSEBL in this regard. She admits that Smt. Bina Devi, Sh. Minta Ram and Beli Ram had also filed Writ Petitions before the Hon'ble High Court of H.P. on similar basis in CWP Nos. 6690, 7386 and 7946/2013 and expressed her ignorance that these persons are now working on regular basis with HPSEB. It is however important to peruse the

pleadings on behalf of respondents where this fact has not been expressly denied. The copy of judgment of the Hon'ble High Court in above mentioned CWP's has been produced on record Ext. PW1/B. The Hon'ble High Court has held in para nos. 4,5 and 6 as follows:—

"4. The learned counsel for the petitioners submit at the very outset that the cases of the petitioners are covered under judgment dated 10th July, 2008 rendered by the Hon'ble High Court of Kerala at Ernakulam in WA No. 627 of 2008, Kerala State Electricity Board Vs. The General Secretary, Kerala State Electricity Board Petty Contractors and Contract Line Workers Union and others, text whereof is as under:- "The Electricity Board herein challenges Ext.P1 award of the Industrial Tribunal, Pakakkad, under which certain directions have been issued to the Board, concerning regularization of petty contract workers and contract line workers. The reference order reads as follows: "Whether the demand for regularization of the services of petty contract workers and contract line workers by KSEB is justifiable? If so what relief they are entitled to?" It has come out in evidence that even though they are named as petty contract workers, they are doing regular work of Electricity Board workers. They do the regular work normally discharged by the electricity workers of the concerned officers. The Tribunal found that existence of a petty contractor as an intermediary is only a sham and pretense. This is not a case where the casual workers were ordered to be regularized by the High Court. Here adjudication power of the Tribunal is wider than the court in such matters. The Tribunal ordered that the petty contractors, who are doing the same work of regular workers continuously for more than 1200 days during the five years of the premises of the Board should be regularized. It is true that there were settlement with the petty contractors union and the appellant Board regarding their piece rate income. That settlement is also a conciliation settlement under the Industrial Dispute Act which shows that they are workers as defined under the Industrial Dispute Act. The Tribunal considered the matter in detail and passed the award. The learned Single Judge for valid reasons upheld the award. We fully agree with the reasons given by the learned Single Judge and the appeal is dismissed. With regard to the observation in the impugned judgment that regularization will be done only from Exts. W23 and W24 series lists, it is contended that equal treatment should be given to all persons who had service for more than 1200 days and members of one union who submitted the list before the Tribunal alone can be absor bed. It is submitted by some of the unions that they are challenging that part of the judgment seriously. In any event paragraph 48 of the award does not state their regularization should be done from Exts. W23 and W24 series lists only. Award of the Tribunal is not liable to be set aside on any of the grounds urged by the appellant. The writ appeal is disposed of accordingly"

5. It is further submitted that a Special Leave Petition against the aforesaid judgment dated 10.7.2008 in WA No. 627 of 2008 has also been dismissed by the Hon'ble Supreme Court, vide order dated 12.3.2010 in petition for Special Leave to Appeal (Civil) No. 23872 of 2008.

6. In view of the above, if on facts the cases of the petitioners are covered under the aforesaid judgment dated 10.7.2008 in WA No. 627 of 2008, as upheld by the Hon'ble Supreme Court in SLP (Civil) No. 23872 of 2008, benefit of the said judgment shall also be extended to them without any discrimination within three months from the date of production of copy of the judgment of this court as also the judgment/order in WA No. 627 of 2008 and SLP (Civil) No. 23872 of 2008 referred to hereinabove, by the petitioners before the respondents/competent authority by taking into consideration the policies framed by the State Government with regard to regularization of different categories of its employees from time to time and adopted by the respondent-Board".

14. In the present case the CWP No. 7847 of 2013 was also filed by petitioner which was transferred to H.P. Administrative Tribunal. The order Ext. PW1/C was passed by Hon'ble Administrative Tribunal directing the respondents to consider the appointment of the petitioners on similar basis however the representations made by the petitioners was rejected vide order Mark-A by Executive Director, Personnel HPSEBL Shimla.

15. The pleadings and statements of witnesses in present case established the fact that petitioners no.1 and 2 had performed more 8 years of services with the respondents on quotation basis and the benefits of regular services were however denied on the basis of the law laid down by the Hon'ble Supreme Court in **Uma Devi's case (Supra)**. In this regard it is pertinent to discuss the precedent laid down by Honb'le Supreme Court in **Jaggo vs. Union of India and Ors., SLP No. 5580/2024** wherein the Hon'ble Supreme Court had observed that the persons in regular services worked for more than 10 years required to be regularized. The relevant portion of the judgment is below:—

"20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in Vinod Kumar v. Union of India, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case..."

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment :

continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. *The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*

23. *The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.*

24. *The landmark judgment of the United State in the case of Vizcaino v. Microsoft Corporation serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.*

25. *It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long- term obligations owed to employees. These practices manifest in several ways:*

    - *Misuse of "Temporary" Labels:*

      Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks. • Arbitrary Termination:

Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

- *Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant. • Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

- *Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.*

26. *While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.*

27. *In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."*

16. In the present case also the appointment of the petitioners cannot be termed as illegal as the respondents have made payment to the petitioners on work order basis but this was not done

for brief period but continued for more than 8 years without any break. This was a clear violation of entry No.10 of Vth Schedule of the Industrial Disputes Act, 1947 and hence amounted to unfair labour practices on behalf of the respondents. Petitioners were deliberately made to work on work order basis with a view to deprive them the benefits privileges of workmen. The mode of appointment of the petitioners can be termed as irregular in terms of law laid down by Hon'ble Supreme Court in **Uma Devi's case (Supra)** however it cannot be denied that they had continuously worked for a number of years on similar terms being labeled as petty contractors working on work order basis. The nature of duties of clerk-cum-typist is such that the work cannot be classified as contractual in nature. The nature of work performed by petitioners was akin to permanent employees. Despite this they were deprived the benefits of continuous service by labeling them as working on small contract/work order basis.

17. Hon'ble Supreme Court in **Hari Nandan Prasad and Anr. vs. Employer I/R to Mangmt. of FCI and Anr. (SC) BS531118** has held in para no.34 as follows:—

> *"34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.*

18. The deposition of petitioners that more than 600 regular posts of Typist-cum-Clerk are vacant in respondent Board is not controverted in their cross-examination. No counter deposition is made by respondent witness also. Depriving the petitioners benefits of continuous service like their permanent counterparts amounts to violation of the principle of equity, fairness and natural justice. It is pertinent to mention here that findings of the Hon'ble High Court in CWP Nos.6690, 7386 and 7946/2013 had led to regularization of workers who had approached the Hon'ble High Court on similar basis. In the light of this fact also depriving the petitioners of their claim of regularization would violate their fundamental rights. Considering the long terms of services rendered by the petitioners their case has to be considered for the purpose of regularization in accordance with the rules and policies framed by the H.P. Government and applicable to the respondents department. The issues no.1 and 2 are accordingly decided in the favour of the petitioner.

Issues No. 3 and 4

19. The onus of proving these issues was on the respondents. The respondents have consistently denied relationship of employer and employee with the petitioners. The facts to the contrary have appeared from the pleadings of the parties and it is established that petitioners have performed continuous work with the respondents for more than 10 years. The engagement of the

petitioners on work order basis was merely sham in order to deprive them of the benefits of continuous service and on the basis of the same the respondents cannot deny master servant relationship with the petitioners. The claim petition is maintainable and the issues no.3 and 4 are decided in the favour of the petitioners.

RELIEF

20. In view of my findings on the issues no. 1 to 4 above, the claim petition succeeds and is allowed. Considering the long terms of services rendered by the petitioners their case has to be considered for the purpose of regularization in accordance with the rules and policies framed by the HP Government and applicable to the respondents department. Parties are left to bear their costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 67/2022

Date of Institution : 02.6.2022

Date of Decision : 28.8.2025

Smt. Jyoti Devi w/o Shri Shashi Kumar, r/o Village Jodi Taal, Ward, No.1, P.O. & Tehsil Jawalamukhi, District Kangra, H.P. . . *Petitioner.*

Versus

The Block Medical Officer-*cum*-Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital Jawalamukhi, District Kangra, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Ms. Arti, Ld. Advocate

For Respondent : Sh. B.C. Katoch, Ld. Dy. D.A.

AWARD

The following industrial dispute has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner:

> "Whether the termination of services of Smt. Jyoti Devi w/o Shri Shashi Kumar r/o Village Jodi Taal, Ward No.1, P.O. & Tehsil Jawalamukhi, District Kangra, H.P. by the Block Medical Officer-cum-Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital, Jawalamukhi, District Kangra, H.P. *w.e.f.* 01-01-2022, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the claimant/petitioner was appointed as sanitation worker/safai karamchari in the month of December, 2019 by the respondent at Civil Hospital, Jawalamukhi under Rogi Kalyan Samiti on per month salary basis. It is submitted that since the date of her initial appointment she has discharged duties of her post honestly and diligently. She has never been given any break in service and worked continuously and uninterruptedly. The applicant/petitioner hence became eligible for regularization as sanitation worker or safai karamchari. It is further submitted that the work of the applicant was always found satisfactory and she was never found lacking in discharging her official duties. Nothing adverse was conveyed to her by the respondent. To surprise of the petitioner on 31st December, 2021 the respondent terminated her services without any prior notice and now the respondent appointed sanitation worker/safai karamchari on outsource basis through contractor. According to the petitioner during Covid-19 pandemic period she has performed her duty uninterruptedly as a result of which the administration and Government of H.P. has awarded a certificate of appreciation. It is alleged that termination of the services of petitioner was pre-planned on the part of the respondent to settle their own persons in place of petitioner. It is alleged that the termination of the services of the petitioner on 31.12.2021 was in violation of the provisions of Sections 25-F of the Industrial Disputes Act, 1947 hence illegal and unjustified. It is further submitted that no inquiry was ever conducted by the respondent nor the petitioner confronted with any preliminary report or resolution submitted by the respondent. The petitioner worked continuously with the respondent for about seven years and now she assails the order dated 31st December, 2021 being just illegal, unjust and contrary to the provisions of the Industrial Disputes Act. It is submitted that one month's notice in writing indicating the reason of retrenchment was never given to the petitioner. The entire process of retrenchment was completed within a day and no procedure was followed by the respondent. She had worked at Civil Hospital Jawalamukhi under Rogi Kalyan Samiti without any complaint and she was entitled to a reasonable opportunity of hearing. It is alleged that respondent had violated the principle of natural justice. It is also alleged that the applicant completed 2 years of continuous service and completed more than 240 days in each calendar year. It is prayed that order dated 1.1.2022 may be quashed and set aside. Respondent be directed to re-engage the applicant in her old place post along-with back wages and service of the petitioner may also be regularized along-with all consequential benefits.

3. In reply preliminary objections qua maintainability, suppression of material facts, petition being bad for delay and laches, locus standi, cause of action, petition being bad for non-joinder and mis-joinder of necessary parties etc. and absence of employer and employee relationship between the petitioner and respondent have been raised. On merits, it is asserted that petitioner was never appointed as sanitation worker by respondent on monthly salary basis but only on hourly basis. In pursuance of resolution no.(i) governing body meeting of RKS in 2019 Smt. Jyoti Devi (petitioner) was engaged for sanitation works of Civil Hospital Jawalamukhi on temporary basis and she was paid hourly rated fixed by the Government. It is denied by the

respondent that petitioner's work was found satisfactory and she was never lacking in discharge of her duties and nothing adverse was found against her. According to respondent petitioner was engaged on hourly basis and since her engagement she was paid prevalent rate on hour basis as approved by the government. As per resolution permission for engagement of three persons on hourly basis for three months upto 31st March, 2020 as per rules was sanctioned. During Covid-19 period the petitioner was awarded certificate of appreciation however such kind of certificate do not give any right or benefit in favour of the petitioner such kind of appreciation certificate was given to most of frontline workers. On 30.12.2021 an urgent meeting was called for reconciliation of part workers' engagement under Rogi Kalyan Samiti, Civil Hospital Jawalamukhi. It was proposed to the contractor that he should adjust and engage the worker who had already been engaged in the sanitation work under RKS CH-Jawalamukhi to which contractor Shri Raj Kumar agreed in the meeting. The workers were given option with contractor as per awarded contractor however only two worker namely Jai Chand and Ms. Reena Devi agreed to join and rest of the workers refused to acknowledge any reconciliation. Vide its meeting conducted on 30.11.2021 governing body of RKS in point no.3 of meeting decided that the part-time workers engaged on hourly basis as per previous pattern continue to do so till the sanitary service on outsource by the office of CMO Kangra at Dharamshala for the hospital or till 31.3.2022 whichever is earlier. As per letter No. HFW-KGR(C)Tender/2021-22-2782 dated 24.12.2021 from the CMO office Kangra at Dharamshala the work of sanitation was awarded to M/s Maharishi Enterprises, Village Dehra, District Kangra, H.P. The respondent had denied the termination of the services of the petitioner during 31.12.2021 without following the provisions of the Industrial Disputes Act. It is submitted that RKS fund mainly consists of user charges of grant in aid tied to specific head. According to respondent since the petitioner was not an employee of the respondent it is wrong to suggest that no inquiry was required to be conducted. It is reiterated that petitioner was engaged on hourly basis and was paid hourly rate prescribed by the government. The payment was made from own sources of Rogi Kalyan Samiti which were generated by levying user charges for various service providers to patients. According to respondent they have not violated any provisions of the Industrial Disputes Act. Other averments made in the claim petition are denied and it is prayed that the petition deserves to be dismissed.

4. In the rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the respondent has illegally terminated the services of the petitioner *w.e.f.* 01-01-2022, as alleged? . . *OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority and other consequential service benefits as claimed? . . *OPP.*

3. Whether the petitioner has suppressed material facts and has not come to the Court with clean hands, as alleged? . . *OPR.*

4. Whether no relationship of employer and employee exists between the parties, as alleged? . . *OPR.*

5. Relief

6. In order to prove her case the petitioner has produced her affidavit Ext. PW1/A wherein she has reiterated the averments made in the claim petition. She also produced on record

certificate Ex. P1, copy of bank account statement Mark A-1 and copy of application to BMO Mark A-2.

7. Respondent has examined Dr. Sanjay Bajaj, Block Medical Officer, Jawalamukhi by way of affidavit Ext. RW1/A wherein he has reiterated the facts stated in the reply and also produced on record documents *i.e.* copy of meeting dated 20.12.2019 Ext. RW1/B, copy of letter dated 7.4.2011 Ext. RW1/C, copy of bill vouchers Ext. RW1/D, copy of letter dated 30.12.2021 Ext. RW1/E, copy of award of contract of sanitation Ext. RW1/F and copy of legal frame work and composition Ext. RW1/G.

8. I have heard the learned Counsel for the petitioner as well as learned Dy. D.A. for respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

10. The petitioner has contended that she was appointed as a sanitation worker at Civil Hospital Jawalamukhi under Rogi Kalyan Samiti since 2019 and thereafter she worked continuously and performed her service till 2021. She alleges that she worked continuously uninterruptedly till 31.12.2021. She has asserted that she was kept by Hospital authorities and denied that a meeting with contractor was engaged. According to her she was doing cleaning work under direction and supervision of hospital authorities. RW1 Dr. Sanjay Bajaj has deposed that in 2013 quotations was called and work awarded to lowest quotation made by a contractor The contractor had prerogative to engage and disengage the workers and contractor was lastly paid in March, 2017. RKS Governing body kept 3 sanitation workers on 22.9.2017. The identity card produced on record by the petitioner depicts that petitioner was employee of Civil Hospital Jawalamukhi from 2020 onwards. The office notes produced by respondent clearly show that petitioner was engaged for sanitation work along-with four other workers subsequent to March, 2020 and engaged time to time till March, 2021 and upto January, 2022. The payment which was due to the sanitation work calculated on monthly basis. The Industrial Disputes Act does not differentiate between part-time worker, full time worker, casual worker, daily wage worker or regular or permanent workers. The definition of workman under the Industrial Disputes Act is broad enough to include part-time employees. Hon'ble High Court of Delhi in (Kailash Chand Saigal vs. Om Prakash and others **2006 IX AD (Delhi) 158** has held as follows in paras no.4,5 and 6:—

4. The Labour Court held that a part time employee was covered by the definition of workman as given in section 2(s) of the Industrial Disputes Act. The : 8 : (RC)

emphasis of petitioner has been that a part time employee of the nature of a Sweeper who only used to sweep the office in the morning say for half an hour and half an hour in the evening, could not be covered by section 2(s).

5. The issue of a part time Sweeper had come before this Court in Coal India Ltd. Vs. P.O. (Labour Court) and Others 2001 III AD (DELHI) 742 where the services of a parttime Sweeper who used to get Rs.10/ per day for the part time work were terminated in the same fashion without assigning any reason. This Court observed as under : "The Labour Court has relied upon the definition of Section 2(s) of the Industrial Disputes Act, defining the workman and found that according to the said definition a parttime employee; will also be a workman as per Section 2(s) of the Act.

The Labour Court has also relied upon the judgments reported as State of Workman and others Vs. K.C. Dutta 1967; K. Ramachandran Vs. State of Kerala; Gurudarshan Sngh Vs. State of Punjab (1983) (1) SLJ 399 (1) SLJ 399;

Kanubhai Maru Vs. N.K. Desai 1988I LLN 1004 and Yashwant Singh Yadav Vs. State of Rajasthan and Others 1987 : 9 : (RC) LLR 96 to come to a conclusion that the definition of the workman is comprehensive and wide enough to include a parttime employee. The Labour Court further found that the parttime employee is covered by the definition; as per Section 2(s) of the Industrial Disputes Act. I am satisfied that the aforesaid finding of the Labour Court regarding the availability of the protection of Section 2(s) and other cognate sections is legally sustainable and does not call for any interference. In particular I am in respectful agreement with the law laid down in Kanubhai Maru Vs. N.K. Desai 1988 (1) LLN 1004 by the Gujarat High Court where a parttime servant doing the work of a sweeper has hold to be a workman and the law laid down in Yashwant Singh Vs. State of Rajasthan and Others 1987 LLR 96 by Rajasthan High Court which held that Section 2(s) of the Industrial Disputes Act covers a part time employee also. It was admitted that the workman was employed since 21st of February, 1983 and worked till 31st of October, 1984 and there was no gap or absence in his duty and he had been continuously employed during the said period. The Labour Court held that having thus worked for more than a year, his services could not be terminated without complying with the mandatory provisions of Section 25(F) of the Industrial disputes : 10 : (RC) Act."

6. I consider that looking into the definition of section 2(s) and catena of judgments, a parttime workman is equally a workman and is entitled for protection available to a full time workman."

Hon'ble Punjab & Haryana High Court has held in Simla Devi vs. Presiding Officer & Ors., LLJ **1997 (I) 788** as follows:—

14. Similarly, in another authority reported as Simla Devi vs. Presiding Officer & Ors. LLJ 1997 (I) 788, Hon'ble Punjab & Haryana High Court observed in paragraph 4 as under: "A plain reading of the definition of "workman" does not exclude the parttime workmen form the definition "workman". Such exclusion cannot be read into it ipso facto except if it is expressly provided or implied that no other interpretation is possible, which is not the case in the case in hand. We find support for our view from the observations made by the Supreme Court in Birdhichand Sharma vs. First Civil Judge (1961IILLJ86), wherein the Supreme Court in the facts and circumstances of the case, found that the workers even doing the job at their home are still workmen. Thus, we are of the considered

view that a parttime workman shall fall within the definition of "workman" and the finding returned by the Labour Court that a parttime worker is not a workman, cannot be sustained. We may hasten to add that nothing has been pointed out that on any principle of equity, justice, good conscience or the technical interpretation of the definition of workman that a parttime workman cannot be termed as a workman is unknown to the industrial world."

11. In the present case also the office notes and attendance record and subsequent documents produced by respondent show the continuous appointment of petitioner as part-time worker for six hours daily till March, 2021 upto January, 2022 *i.e.* alleged date of termination in the reference as well as in claim petition. The petitioner as per the above precedent clearly falls within the definition of workman under the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes Act as follows:—

25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:[* * *] [Proviso omitted by Act ***49 of 1984***, Section 32 (w.e.f. 18.8.1984).]

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] [Substituted by Act 36 of 1964, Section 14, for " for every completed year of service" (w.e.f. 19.12.1964).] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.] [Inserted by Act 36 of 1964, Section 14 (w.e.f. 19.12.1964).]

12. Thus under Section 25-F the condition precedent to retrenchment of the workmen have been clearly laid down. The Hon'ble Supreme Court in **K.V. ANIL MITHRA & ANR. VERSUS SREE SANKARACHARYA UNIVERSITY OF SANSKRIT & ANR. LL 2021 SC 624** has held in paras no. 23 and 24 as follows:—

"23. The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.

24. The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947".

13. In view of the above ratio laid down by the Hon'ble Supreme Court it is clear that the petitioner even though appointed as part-time employee had completed 240 days of continuous service within the last preceding 12 months of his employment by the respondent. The respondent has not disputed that the petitioner has remained in continuous employment with the respondent for almost a period of more than two years. It is clearly proved on record that before dispensing with the services of the petitioner no notice under Section 25-F of the Industrial Disputes Act or the wages in lieu of his retrenchment have ever been paid to the petitioner. Respondent has not produced any document to show the compliance of the provisions of Section 25-F of the Industrial Disputes Act. Thus termination of the services of the petitioner by the respondent was in violation of the provisions of the Industrial Disputes Act and accordingly issue no.1 is decided in the favour of the petitioner.

Issue No. 2

14. It has been proved from the evidence on record that the petitioner even though employed on six hours basis per day had completed the mandatory period of service for benefits under Section 25-F of the Industrial Disputes Act. The respondent has violated the specific provisions of the Act in these circumstances the petitioner is entitled to reinstatement on the similar post and similar basis since 1.1.2022 along-with compensation sum of Rs.50,000/- without back wages in violation of the provisions of the Industrial Disputes Act. Hence this is decided accordingly.

Issue No. 3

15. The onus of proving this issue on the respondent. The petitioner has filed the claim petition against Block Medical Officer Jawalamukhi and the Rogi Kalyan Samiti. In the petition itself there is no suppression of material facts by the petitioner. The petitioner cannot be deprived of his claim under the Industrial Disputes Act on account of suppression of material facts. Hence this issue is decided in the favour of the petitioner.

Issue No. 4

16. It has been vehemently contended by the learned Deputy District Attorney for State that the petitioner was employed on hourly basis through Rogi Kalyan Samiti which is not an instrumentality of Civil Hospital Jawalamukhi. It is also asserted that Rogi Kalyan Samiti is a separate committee under the chairmanship of Sub Divisional Magistrate of the area and Block Medical Officer is merely member of the committee. It is further contended that the present claim as well as the reference was bad on account of non-joinder of necessary party i.e. Chairman of Rogi Kalyan Samiti. The Hon'ble Supreme Court in **Hussainbhai, Calicut vs. The Alath Factory Thezhilali Union Kozhikode and Ors. MANU/SC/0265/1978** has held that to determine whether person is employer, there should be an economic control and continued employment of the workmen. Further, if the livelihood of the workman depends on the services rendered, then a direct relationship or existence of respondent contractor does not matter. The real employer would be the

one who is in charge throughout. In the circumstances of the present case the fact that Block Medical Officer is the member of Rogi Kalyan Samiti is not disputed. The fact that petitioner was working at Civil Hospital Jawalamukhi under direct control and supervision of the Block Medical Officer Jawalamukhi clearly appears from the evidence on record. The payment which have been made to the petitioner were also made either from own source of RKS or as per grant from the Government as mentioned in "Legal Framework and composition of RKS", "fund pattern and resources mobility" of Rogi Kalyan Samiti and the payment of wages was through Block Medical Office to Rogi Kalyan Samiti account. All the above facts clearly show that the petitioner was working under the direct control and supervision and was also being paid through Block Medical office. The respondent cannot refuse to comply with the mandatory provisions of the Industrial Disputes Act under the guise of the responsibility falling within the ambit of Chairman of Rogi Kalyan Samiti. There was clear and consistent relationship of employer and employee between the Block Medical Office concerned hospital as well as the petitioner. The issue is accordingly decided in the favour of the petitioner.

RELIEF

17. In view of my discussion on the issues no. 1 to 4 the claim petition succeeds and is partly allowed. The petitioner is entitled to reinstatement on the similar post and similar basis since 1.1.2022 along-with compensation sum of Rs. 50,000/- without back wages, in violation of the provisions of the Industrial Disputes Act. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 90/2022

Date of Institution : 11.10.2022

Date of Decision : 28.8.2025

Shri Sumeet Kumar Bhatia s/o Shri Kesar Chand, r/o Village & P.O. Kuhna, Tehsil Rakkar, District Kangra, H.P. . . *Petitioner.*

Versus

1. The Principal, Government Degree College Dharamshala, Tehsil Dharamshala, District Kangra, H.P.

2. Himachal Pradesh University, Summer Hill, Shimla, H.P. through its Vice Chancellor

. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. Vinesh Dhiman, Ld. Legal Aid Counsel
For the Respondent No. 1	:	Sh. R.S. Rana, Ld. Adv.
For the Respondent No. 2	:	Sh. C.B. Raina, Ld. Adv.

AWARD

This is a claim petition under Section 10 of the Industrial Disputes Act, 1947 by order dated 11th October, 2022 has been treated as reference. The brief facts as stated in the claim petition are that the petitioner was appointed as Lab Attendant on the basis of PTA on 16.9.2002 and he attended his job regularly. On 25.11.2002 wife of petitioner was burnt with stove fire accidently when she was cooking food in kitchen and expired due to injury on 2.12.2002. On the pressure of petitioner's wife family police wrongly registered an FIR Under Section 302 of IPC against the petitioner on 4.12.2002 and arrested him on 6.12.2002. The petitioner had applied for leave from 26.11.2002 to 29.11.2002 and he further extended the leave telephonically. He applied for bail on 8.1.2003 before Hon'ble High Court of H.P. and was released on bail on the basis of dying declaration of his wife which was not against him. After getting bail from Hon'ble High Court on 17.1.2003 petitioner went to the office of respondent no.1 to join his duty but respondent no.1 did not allow him to join his duties. After getting the bail, petitioner had made several requests to respondent no.1 and also personally visited the office of respondent no.1 for his job but all in vain. On 30.1.2003 petitioner moved an application with a copy of bail order of Hon'ble High Court allowing him to join his duties but respondent no.1 had neither replied to the application nor allowed him to join his duties. On 29.11.2007 Honb'le High of Additional Session Judge-II Kangra at Dharamshala had acquitted the petitioner on 27.2.2017. The Hon'ble High Court and Hon'ble Supreme Court has also dismissed the appeals of the State against the petitioner. The petitioner has alleged that respondent had orally terminated the petitioner's service without following the mandatory provisions of the Industrial Disputes Act, 1947 and their Standing Orders. His services were terminated without complying with the provisions of Sections 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 and as such violates the rights of the petitioner. It is alleged that this was carried out to appoint new favourite person in place of the petitioner. Petitioner has also alleged that respondent had no right to terminate his services without any sufficient reasons. He has also alleged that oral termination of the petitioner violated the provisions of Section 25 Clause F of the Industrial Disputes Act as the necessary compliance under the said Section was not carried out by respondent no.1. It is also submitted that after the death of his wife there was psychological impact on him and he went into depression. Petitioner was under the observation and medical treatment in PGI Chandigarh from 3.3.2003. He had written several letters to the respondent but the respondent did not reply to the same. On 12.1.2021 petitioner served demand under Section 2-A of the Industrial Disputes Act, 1947 through post to respondent no.1. It is prayed that in the interest of justice the termination of the petitioner may be declared null and void and he may be granted all the consequential benefits, allowances, back wages, seniority and compensation along-with interest for the illegal act of the respondent no.1.

2. In reply to the claim petition on behalf of respondent no.1 preliminary objections qua maintainability, the engagement of petitioner being under PTA on the basis of honorarium only and petition being time barred have been raised. On merits, it is asserted that the petitioner had served for two months and 9 days on payment of honorarium by PTA as such no funds were to be released to the petitioner from Government treasury. It is alleged that conduct of the petitioner was bad and he was irregular and unprofessional in his job. Later on the case for murder of his wife under Section 302 IPC was also registered against him. It is also mentioned that there is no record in the office of respondent no.1 that petitioner ever applied for leave from 26.11.2002 to 29.11.2002 or thereafter got extended his leave telephonically. According to respondent petitioner was never dismissed or discharged or retrenched from his service or otherwise his services were also not terminated. The petitioner infact never visited the office of respondent no.1 and served any letter to respondent no.1 at any point of time. He had raised industrial dispute after lapse of more than 17 years just to harass the respondent. It is also submitted that the petitioner is entitled for any benefit under Section 25-F of the Industrial Disputes Act, 1947 as he has not completed 240 days of continuous service at any point of time. He remained absent from his work without any explanation and approached by way of demand notice after 17 years. It is also asserted that the petitioner is not entitled for benefit under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Other averments made in the petition have been denied and it is prayed that the petition deserves to be dismissed.

3. The respondent no. 2 was not able to file any reply despite sufficient opportunities hence the defence of respondent no. 2 was struck of by the order of the Court *vide* order dated 30.11.2023.

4. In rejoinder to the reply filed on behalf of respondent no.1 preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the services of the petitioner were terminated *w.e.f.* 17.1.2003 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947. Hence illegal, null & void? . . *OPP.*

2. If issues No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation, as claimed? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . *OPR.*

4. Whether the petition is barred by limitation? . . *OPR.*

Relief

6. In order to prove his case the petitioner has produced on record his affidavit PW1/A wherein he reiterated the facts stated in the claim petition and he also produced on record copy of letter dated 24.2.2022 Mark-A, copy of letter dated 14.7.2021 Mark-B, copy of judgment dated 29.11.2007 Ext. P1, copy of bail order dated 8.1.2020 Ext. P2, copy of order of Hon'ble High Court dated 16.9.2016 Ext. P3, copy of order dated 27.2.2017 Ext. P4, copy of patient card dated 28.3.2018 Ext. P5, copy of patient Card dated 7.4.2018 Ext. P6, copy of outpatient ticket dated 13.2.2007 Ext. P7, copy of outpatient ticket dated 25.11.2006 Ext. P8, copy of outpatient ticket dated 22.12.2005 Ext. P9, copy of outpatient ticket dated 14.12.2005 Ext. P10, copy of OPD registration dated 26.11.2011 Ext. P11, copy of patient record dated 26.5.2005 Ext. P12, copy of

prescription receipt dated 16.2.2005 Ext. P13, copy of outdoor prescription receipt dated 13.2.2018 Ext. P14, copy of prescription receipt dated 14.7.2017 Ext. P15, copy of prescription receipt dated 3.3.2003 Ext. P16, copy of letter dated 30.1.2003 Ext. P17, copy of receipt Ext. P18, copy of application dated 15.6.2020 Ext. P19, copy of demand notice dated 12.1.2021 Ext. P20, copy of repeated demand notice Ext. P21 and copy of postal receipt Ext. P22.

7. Respondents have examined Shri Rakesh Pathania, Principal, Government Post Graduate College Dharamshala by way of affidavit Ext. RW1/A and he has also reiterated the facts as mentioned in reply. He has also produced on record copy of PTA Rules Ext. RW1/B.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1

10. Petitioner has stated on oath in his affidavit that he was employed as Lab Attendant by respondent no.1. The post of Lab Attendant was duly published in newspaper. He applied for said job and after passing all the formalities set by the respondent along-with personal interview as appointment was on the basis of PTA on 16.9.2002. His wife was accidently burnt in gas stove fire on 25.11.2002 and expired due to injuries subsequent false case under Section 302 IPC got registered against him. He had applied for leave from 26.11.2002 to 29.11.2002 and thereafter he had telephonically extended his leave. Subsequently he was acquitted by the trial court as well as appellate courts from the criminal charges made against him and he raised demand notice in the year 2021. He has also submitted that he was under depression and receiving medical treatment for the same after the year 2003. He had tried his best to join his duties but his application for joining his duties dated 30.1.2003 was not acted upon by the respondent no.1 nor he was allowed to join his duties. In his cross-examination he has admitted that he had served from 16.9.2002 to 25.11.2002 which is a period of about 2 months and 9 days as lab attendant with respondent no.1. He admitted that after 2 months and 9 days he had stopped attending his job however according to him a false case was got registered against him. He admits that regarding the above he had not given any information to the respondent. He also admits that he had not done any proceedings regarding job restoration with respondent no.2 and asserts that his job was provided by respondent no.1 only. He has further admitted in his cross-examination that he had applied for leave only for 26.11.2002 to 29.11.2002 however he is unable to state whether there is any record for the same with the respondent no.1. He asserts that he informed his employer telephonically. He further admitted that subsequently he had not given any application for leave to respondent no.1. He has also shown his ignorance to the suggestion that when he came to join his duty on 25.11.2002, the college authority had already marked absented without leave. He has denied that he failed to visit

the college for 17 years and asserts that he went on 17.1.2003 however he was not allowed to join duties but subsequently he did not communicate with the college from 17.2.2003 to 15.6.2020. He had admitted that he had not completed 240 days of work as lab attendant with the respondent no.1.

11. The petitioner has alleged the violation of Section 25-F of the Industrial Disputes Act, 1947. It is important to mentioned here that under Section 25-B definition of continuous service has been provided under the Industrial Disputes Act, 1947 and it was mandatory for the petitioner to complete 240 days of continuous work with respondent no.1 for becoming eligible for any benefits under Section 25-F of the Industrial Disputes Act. The petitioner has himself admitted that he had not completed 240 days of continuous service with respondent. Section 25-F of the Industrial Disputes Act, 1947 as follows:—

"25F.Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]".

12. In view of the above legal provisions the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act. Since the petitioner had not completed continuous service of 240 days prior to his alleged disengagement no relief can be granted under Section 25-F nor it can be held that the respondent has violated the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947.

13. Learned counsel for the petitioner has vehemently argued that the petitioner had tried to approach the respondents to join his duties when he was released on bail. Pertinent to mention here that the alleged leave application could not be produced from record for perusal of this court however copy of the application dated 30.1.2003 sent by the petitioner to the respondent along-with copy of postal receipt has been produced as Ext. P17 and Ext. P18. This implies that respondent has tried to join his services after he was released on bail however no action was taken by the respondent no.1 in this regard. RW1 Shri Rakesh Pathania has very clearly admitted in his cross-examination that new appointment was made on the post held by the petitioner. He is unable to state whether any letter was given to the petitioner to join his work before the new appointment was made on his place. He also admits that no termination or suspension letter was ever given by respondent no.1 to the petitioner. Section 25 Clause H of the Industrial Disputes Act, 1947 as follows:—

"25H. Re-employment of retrenched workmen.—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2 [to the retrenched workmen who are citizens of India to offer themselves for reemployment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons".

14. It is pertinent to mention here that in order to claim the relief under Section 25-H of the Industrial Disputes Act, 1947 completion of 240 days of continuous service is not necessary under Section 25-B of the Industrial Disputes Act. The respondent had proposed to take new appointee in place of the petitioner. There is nothing on record to show that after the petitioner had allegedly absented from his duties the respondent had made any verbal or written communication with him asking him to join his service. The letter Ext. P17 and Ext. P18 clearly shows that the petitioner had expressed his intention to join his duties which was not acted upon by the respondent no.1. The petitioner was not given an opportunity for reemployment before appointing another person of his place. In these circumstances the respondent no.1 has violated the provisions of Section 25 Clause H of the Industrial Disputes Act, 1947. Accordingly issue no.1 is partly decided in the favour of the petitioner.

Issue No. 2

15. The facts of the case clearly show that the petitioner was employed in the year 2002 and after working for 2 months and 9 days he was not able to join his service due to criminal case against him. The last communication which appeared to have been made by petitioner with the respondent is dated 30.1.2003. It is clear that according to petitioner the respondent no.1 had not allowed him to join his duties after the said communication however no demand notice was raised by the petitioner during that period. The petitioner has submitted that he was reeling under depression at the time of prosecution of the criminal case and certain medical prescriptions etc. had been produced on record to show the fact that petitioner was receiving treatment for his mental ailment. It is pertinent to observe here that petitioner was facing a criminal trial of serious nature from the year 2003 to 2017 however during this period he has not raised any demand notice for industrial dispute. There is nothing on record that the petitioner was not in sound mind to claim relief of industrial dispute before relevant authorities. This clearly points towards the fact that the petitioner had raised the industrial dispute after considerable period of time without reasonable explanation for delay. In these circumstances even though the respondent appeared to have violated the provision of Section 25 Clause H of the Industrial Disputes Act, the petitioner can only be held entitled for the relief of compensation and not reinstatement. Thus petitioner is held entitled for lump sum compensation of Rs. 50,000/- on account of violation of the provisions of the Industrial Disputes Act by the respondent no.1. Issue no.2 is decided accordingly.

Issues No. 3 and 4

16. The onus of proving these issues on the respondents. Though respondents have established that the petitioner had approached the appropriate authority after unexplained delay of 17 years however the respondents have not been able to prove that the petitioner has voluntarily abandoned his job. Since the violation of the provisions of the Industrial Disputes Act is clear from the evidence on record. Considering the amount of delay the relief being awarded to the petitioner can be moulded however the claim petition is maintainable and cannot be considered as time barred. Hence issues no.3 and 4 are decided in the favour of the petitioner.

RELIEF

17. In view of my discussion on the issues nos. 1 to 4 above, the petitioner can only be held entitled for the relief of compensation and not reinstatement. Thus petitioner is held entitled for lump sum compensation of Rs. 50,000/- on account of violation of the provisions of the Industrial Disputes Act by the respondent no.1. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT UNA)

Reference No. : 70/2021

Date of Institution : 17.4.2021

Date of Decision : 30.8.2025

Shri Avtar Singh s/o Shri Didar Singh, r/o Village and Post Office Nangran, Tehsil and District Una, H.P. . . *Petitioner.*

Versus

Manager, Deepak Fasteners Ltd., Unit-II Phase VI, Industrial Area, Taliwal, District Una, H.P. . . *Respondent.*

Direct Claim petition under Section 10 read with Section 2(A) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For the Respondent : Sh. Sanjeev Gupta, Ld. Adv.

AWARD

This is a direct claim petition under Section 10 read with Section 2-A Clause (2) of the Industrial Disputes Act, 1947. The brief facts as stated in the claim petition are that the petitioner Shri Avtar Singh was employed as helper by the respondent factory from 17.8.2007 and he was wrongly, illegally and malafidely terminated from the service on 12.9.2018 by the respondent management. It is submitted that while terminating the services of the petitioner he was getting salary of Rs. 9700/-. PF was not given to the petitioner by the management. No retrenchment compensation was given to the petitioner at the time of his termination. It is asserted that the services of the petitioner were illegally terminated by the respondent management. The petitioner had completed 240 days of work in the factory and was regular worker on the post of helper from 2007. It is submitted that the management had not adopted the 'first come last go' policy adopted and harassed the worker on different pretext. It is asserted that on 8.9.2018 a notice was served by the management to the petitioner with regard to major misconduct and reply to the same was filed by the petitioner. On 12.9.2018 the management had terminated the services of the petitioner

without appropriate proceedings. Thereafter the petitioner had approached the Labour Officer-cum-Conciliation Officer, Una regarding his illegal termination but was in vain. It is alleged that the Labour Officer had not given credence to the matter under the influence of general manager and the Manager HR of the factory. Moreover a Kalandra was framed against the petitioner and other workers on the instance of the said General Manager as well HR. The police had put up the same before the court of SDM Haroli but the same was meritless having no truth as no public peace and tranquillity was breached by the petitioner hence proceedings against the petitioner stand dropped by the learned court. It is further submitted that in matter under Section 2A of the Industrial Disputes Act, 1947 with regard to illegal termination, conciliation officer favoured the industrial management and the petitioner had demanded certificate for further proceedings. After receiving the certificate the petitioner had made many requests for reinstatement but the management had not heard the petitioner. It is asserted that before termination of the services of the petitioner one month's notice was not served upon the petitioner nor he was paid wages in lieu thereof which was bad in law under Section 25-F (a) of the Industrial Disputes Act, 1947. No compensation was paid to the petitioner by the management under the provisions of law under Section 25-F (b) of the Industrial Disputes Act. It is submitted that petitioner is unemployed from the date of his illegal termination till date. It is asserted that the permission from the appropriate authority which was required under Section 25-N of the Industrial Disputes Act but the same was not obtained by the management of the factory and in the absence of the same the termination of the services of the petitioner was void and bad in law. It is therefore prayed that the services of the petitioner may be reinstated and penalty be imposed upon the respondent in the interest of justice.

2. In reply to the claim petition on behalf of respondent preliminary objections qua maintainability, suppression of material facts and petitioner not coming to the court with clean hands have been raised. On merits, it is asserted that the petitioner/claimant was dismissed from his service due to major misconduct which was very grave and criminal in nature. It is mentioned that the act and conduct of the petitioner/claimant towards the management was against the law and spoiled peaceful working atmosphere and as such show cause notice was issued to the claimant for the same. It is clarified that in past also three FIR were registered against the claimant one in 2009, second in 2014 and third in the year 2015. It is asserted that the reply of the petitioner to the show cause notice was not found satisfactory and his services were dispensed with and he (petitioner) was dismissed from services vide company's letter dated 13.9.2018 but no domestic inquiry was held because misconducts were grave and criminal in nature. It is asserted that the police had made kalandra vide case no. 89/2018/Cr. under Section 145, 107/150 Cr. P.C. against the claimant. It is denied that the court of SDM observed and found no truth in the matter. It is denied that the management had taken revengeful view and terminated the services of petitioner. It is denied that the respondent had violated the provisions of Sections 25-F (a), 25-F (b) and Section 25-N of the Industrial Disputes Act, 1947. Other averments and allegations made in the petition have been denied and it is prayed that petition deserves to be dismissed.

3. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed. It is also denied that respondents had served any relieving notice on the petitioner.

4. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of services of the petitioner by the respondent vide letter dated 12.09.2018 without complying with the necessary provisions of the Industrial Disputes Act, 1947 and without conducted the enquiry as per Certified Standing Order Act, 1946 is/was illegal and unjustified, as alleged? . . *OPP.*

2. If issues No.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . *OPR.*

4. Whether the petitioner has not approached to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . *OPR.*

5. Relief

5. In order to prove his case the petitioner has produced on record his affidavit PW-1 and copy of show cause notice dated 10.9.2018 Ext. PW1/A, copy of termination letter dated 12.9.2018 Ext. PW1/B, copy of letter dated 11.9.2018 Ext. PW1/C, copies of conciliation proceedings Ext. PW1/D, copy of complaint dated 17.9.2018 Ext. RW1/E, copy of order dated 23.3.2018 Ext. PW1/F and copy of reply dated 17.1.2019 Ext. PW1/G.

6. Respondent has examined Shri Raj Kumar Bhatia, Manager HR, Deepak Fasterner Ltd. by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He has also produced on record copy of letter dated 10.9.2018 Ext. RW1/B, copy of receipt dated 11.9.2018 Ext. RW1/C, copy of letter dated 13.9.2018 Ext. RW1/D, copy of reply to demand notice dated 29.9.2018 Ext. RW1/E, copy of receipt dated 4.10.2018 Ext. RW1/F, certificate U/S 63-B of BSA Ext. RW1/G, certificate U/S 63-B of BSA Ext. RW1/H, copy of complaint dated 10.8.2019 Ext. RW1/J, copy of FIR dated 25.12.2009 Ext. RW1/K, notice to witness dated 2.3.2020 Ext. RW1/L, copy of proceedings dated 18.9.2020 Ext. RW1/M, CD Ext. RW1/N, copy of mandays chart Ext. RW1/O and copy of affidavit Mark-X. The respondent has also examined Shri Kriandeep Singh, General Manager, Deepak Fasteners Ltd. by way of affidavit Ext. RW2/A and also tendered documents copy of kalandra dated 23.3.2019 Ext. RW2/B and copy of complaint Mark-RA. The respondent has examined Shri Tarsem Singh s/o Shri Pramod Singh, r/o Village Dulehar, Thana Haroli, District Una H.P. by way of affidavit Ext. RW3/A.

7. I have heard the learned AR/Counsel for the petitioner and learned Counsel for the respondent at length and records perused.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Partly Yes
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is partly allowed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1

9. The petitioner has produced his affidavit wherein he has stated on oath that he was engaged by the respondent on 17.8.2007 as helper. He had worked since the year 2007 to 11.9.2018

to the entire satisfaction of his superiors and his services were terminated unlawfully by the respondent on 12.9.2018 without following the mandatory provisions of the Industrial Disputes Act, 1947. He has stated on oath the workers of respondent company formed a union under the name and style of DFL Workers Union (CITU) and petitioner was the President of said union and was authorized to raise time to time genuine demands of the workers before the management/ company. He has alleged that due to his union activity management had targeted him and created a false story of misbehaviour spoken unparliamentarily language and manhandling with GM of the company with the motive to terminate his services. The charges of misbehaviour spoken unparliamentarily language and manhandling have not been proved by the respondent since no domestic enquiry was conducted by the respondent to prove the charges against him. No charge sheet was ever served neither any fair and proper inquiry was held before terminating his services. He has submitted that in the above circumstances his termination order needs to be quashed and his services be reinstated in the interest of justice. In his cross-examination he has admitted that in complaint Ext. PW1/E he mentioned the date of termination as 15.9.2018 and he had not moved any complaint before the Labour Officer with regard to his termination dated 12.9.2018. He has stated that the letter Ext. PW1/C was received by the management company without issuing any receipt. He admitted that the complaint under Section 107/151 Cr.P.C. was filed against him before SDM Haroli. He also admits FIR No.306/2009 under Sections 147,148 and 451 was registered against him at Police Station Haroli. He has however denied that he hurled threats to HR Manager Shri R.K. Bhatia in the year 2019 and subsequently a complaint under Section 107/150 Cr.PC was filed against him before SDM Haroli and that on 8.9.2018 he misbehaved with GM Karandeep Singh, though he admits that complaint with regard to the alleged incident was filed against him. He has denied that he did anything on the said date. He has denied that he received the termination letter dated 13.9.2018. He also denied that he was pressurising the company for accepting illegal demands due to which the company was unable to conduct the domestic inquiry against him. RW1 Shri R.K. Bhatia and RW2 Shri Kirandeep Singh who are working as Manager HR and General Manager in Deepak Fasteners Ltd. respectively have appeared in witness box on behalf of the respondent company. They have stated in their affidavits that on 7.9.2018 at about 11.15 PM a stray dog gave bite to the security guard Raj Kumar and security guard immediately rang Plant Head Mr. Kirandeep who enquired about the driver of ambulance and asked security guard about their liability. The electrician Mr. Iqbal Singh was present he took the phone from security guard and intimated plant Head that he was having personal car and was ready to take security guard for treatment to a doctor. He also informed driver of ambulance was not available. This instructions of plant head Mr. Kirandeep Singh and security guard was taken to doctor for treatment. On next day however *i.e.* 8.9.2018 Mr. Kirandeep Singh was taking routine round of workshop when the petitioner shouted at him in loud voice and with other persons surrounded him in the presence of entire workshop workers. The petitioner shouted at G.M. pushed him and threw him on the workshop floor. He tried to assault him and abused in filthy language. The plant head with the help of Tarsem Lal, Hussan Lal and Deepak Sandal escaped from the clutches of the petitioner. During scuffle the petitioner threatened plant head that he will not let him live in this plant and will eat his job and also warned if he comes to the workshop again he would be beaten in black and blue. Show cause notice dated 10.9.2018 was issued to petitioner for having spoiled peaceful atmosphere of the workshop. A Kalandra vide case no.89/2018 Cr. Under Section 145, 107/150 Cr.P.C. was also filed against the petitioner along-with Ajay and Surinder. In past also many FIRs have been registered against the petitioner. Subsequently petitioner had promised the management not to indulge in any such acts in future. The reply of petitioner to the show cause notice was found to be unsatisfactory. The act of the petitioner was not tolerable and keeping in mind the future of workers working in the factory as well as working atmosphere, the services of petitioner were dispensed with and he was dismissed from service *vide* letter dated 13.9.2018. In these circumstances the domestic inquiry could not be conducted as misconduct of the petitioner was grave and criminal in nature which could have caused harm to inquiry officer as well as the witnesses. Many other workers have also given written complaint against the petitioner which shows that petitioner was indulging in criminal

act which was subversive of discipline and amounts to major misconduct. The call was also made to police on which police took cognizance and made kalandra under Section 107/150 Cr. P.C. Compact disk containing the original audio recording of the mobile conversation between the petitioner and respondent was also produced on record. It is submitted that petitioner had filed false and frivolous claim as he never completed 240 days of work in every calendar year. In addition to this witness RW3 Shri Tarsem Lal has produced his affidavit Ext. RW3/A who has stated that he has worked as machine operator at Deepak Fasteners Factory Tahliwal for last 18 years. He has stated on oath that on 8.9.2018 he was working on his machine when GM Shri Kirandeep Singh was on general round. At that time Avtar Singh, Surinder and Ajay entered into scuffle and hurled abusive language at the GM. They also threatened the GM that they will take his life.

10. Learned counsel for the petitioner has argued that the respondent witnesses are alleging that petitioner had indulged in major misconduct of scuffle and abusing and threatening to GM of the respondent company however the respondent has not followed any procedure established by law to prove three charges before dispensing with the services of the petitioner. Learned counsel has alleged that respondent not only violated the provisions of the Industrial Disputes Act, 1947 but also dispensed with the services of the petitioner in hasty manner without compliance of the Standing Orders applicable to the respondent company and indulged in unfair labour practice.

11. It is important to peruse the cross-examination of the respondent witness Shri R.K. Bhatia who has admitted that the respondent company is registered under Companies Act, 1956 and all kinds of labour laws, Bonus Act, Industrial Model Standing Orders, Minimum Wages Act etc are applicable to the respondent company. He also admitted that in HR department adult worker register are maintained which shows full detail of the appointment date and the date of disengagement of the workers. He admitted that while filing written statement on behalf of the company the appointment letter of the petitioner has not been produced. He has not denied that the workers union registration number is 1161. He has admitted that many times the union has engaged in talks with them regarding the demands of the workers. He has admitted that in the year 2017 also various demands letters have been given on behalf of union for increase salary, bonus etc. of the workers. He has admitted that Avtar Singh was the pradhan of the union.

12. He has further admitted that he is not appointing authority of the petitioner. He admitted that Ext. RW1/B is the show cause notice to the petitioner regarding major misconduct which is issued under his signatures and the signatures of MD. He has further admitted that appointing authority had not prepared any charge-sheet or conducted any domestic enquiry to prove the major misconduct and vide Ext. RW1/D the services of the petitioner were terminated. He has admitted that the reply of the petitioner to the show cause notice was found to be unsatisfactory however the said show cause notice does not mention that what kind of major misconduct the petitioner was found to have committed as per Industrial Model Standing Orders. He has admitted that he cannot explained what was the result of the criminal case registered against petitioner. He has not denied that petitioner has worked for 240 days in each year from 2007 to 2018. He however asserts that as per his knowledge the petitioner has worked continuously in the year 2017 and 2018. RW2 Shri Kirandeep Singh is the Managing Director against him the petitioner alleged to have committed acts of serious misconduct and in his cross-examination he has admitted that petitioner was appointed as helper since 17.8.2007. He also admits his signatures on the notice Ext. RW1/B. He admits that vide Ext. RW1/B the proceeding in kalandra prepared against the petitioner have since been dropped by SDM. He has admitted that no charge-sheet with regard to the allegations made against the petitioner had been issued to him and no domestic enquiry was conducted by the respondent company. He had denied that petitioner was not given an opportunity of being heard however he also admits that the petitioner was not given any suspension allowances as per Industrial Employment Standing Orders applicable to their company. He admits that as per adult register there is entry with regard to the appointment of each of the employee. Though shows

ignorance with regard to seniority list prepared from such register. He has admitted that they have not paid one month's notice or compensation to the petitioner at the time of his disengagement.

13. RW3 Shri Tarsem Lal in his cross-examination has admitted that *vide* Ext. RW1/B his name has not been mentioned as witness of the incident.

14. The learned counsel for the respondent has vehemently argued that the petitioner on dated 8.9.2018 had misbehaved with the General Manager and also scuffled with him. Petitioner had threatened the General Manager which amounted to grave/major misconduct. The incident had occurred in the presence of hundreds of the workers of company and would have incited the atmosphere of indiscipline. The circumstances were such that holding a domestic enquiry would have resulted in serious danger to the witnesses as well as inquiry officer. He has submitted that information regarding incident was given to the police who had acted accordingly and prepared kalandra under Section 145, 107/150 Cr. P.C. against the petitioner. The conduct of the petitioner required immediate disciplinary action and accordingly after a show cause notice the contents of which were found unsatisfactory the petitioner was terminated from his services by way of disciplinary action. Necessary documents i.e. show cause notice is produced on record as Ext. RW1/B which was served vide Ext. RW1/C on the petitioner thereafter termination letter is Ext. RW1/D. The respondent has also produced on record the copy of FIR Ext. RW1/K previously filed against the petitioner along-with copy of kalandra Ext. RW1/L. The learned counsel further submitted that it was the habit of the petitioner to indulge in indiscipline and criminal acts which had led the management to terminate his services after issuance of show cause notice.

15. As already submitted by learned counsel for petitioner the conduct of the respondent is alleged to be against the basic statute, rights of petitioner under the Constitution of India as well as violation of principle of natural justice.

16. Section 2(oo) of the Industrial Disputes Act, 1947 described retrenchment as follows:—

> *"[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—*
>
> *(a) voluntary retirement of the workman; or*
>
> *(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;"*

17. In the circumstances of the present case it is the case of the respondent that the services of the petitioner were terminated by way of disciplinary action. Respondents' witnesses have admitted that Standing Orders applicable to the company have been adopted and certified copy of standing orders have been produced on the case file which clearly provides for procedure for enquiry, procedure for awarding penalty for acts of minor misconduct and also procedure for major misconduct along-with punishment. The standing orders clearly provide for a detail procedure before dispensing with the services of an employee by way of disciplinary action. It is admitted by the respondent's witnesses including official in their cross-examination that no charge-sheet was prepared against the petitioner nor any domestic enquiry was conducted in order to prove the allegations of grave misconduct against him.

18. Entry no.5 (f) of the Vth Schedule of the Industrial Disputes Act, 1947 also provides regarding discharge or dismissal or workman in utter disregard of the principle of natural justice in

the conduct of domestic enquiry or with undue haste pointing towards an unfair labour practice on the part of the respondent company. The termination of the services of petitioner subsequent to the reply filed to show cause notice implies that the company had acted in undue haste without complying with the provisions of Model Standing Orders applicable to the company. This also amounts to unfair labour practice on the part of the respondent management. Article 311 Clause (i) of the Constitution of India also provides that the services of an employee cannot be dispensed with unless the charges are subject to detail enquiry. The respondent management has not only violated the provisions of the Industrial Disputes Act, 1947 but also failed to confirm that the principle of natural justice, equity and good conscience were complied while terminating services of petitioner in the present case. Admittedly the criminal proceedings which resulted in preparation of kalandra against the petitioner were dropped and the proceedings were merely prohibitory in nature. The previous charges against the petitioner have also not been proved. He stands acquitted on all the charges as per documents on record and has also received police clearance. With regard to the alleged incident on 8.9.2018 it was incumbent upon the respondent to follow the procedure provided under the Certified Standing Orders and offer an opportunity being heard to the petitioner before major penalty of dismissal from services was pronounced. Since the services of the petitioner were terminated without following the proper disciplinary procedure the same amounts to retrenchment under the provisions of Section 25-F which is not complied by the respondent management. It is hence proved from the evidence on record that the termination of the services of the petitioner vide letter dated 12.9.2018 was without compliance with the necessary provisions of the Industrial Disputes Act, 1947 and Certified Standing Orders of the company and was accordingly illegal and unjustified and this issue is decided in the favour of the petitioner.

Issue No. 2

19. It has been proved from the evidence of the case file that the services of petitioner were terminated without following due process in violation of the statute as well as constitutional rights. In these circumstances the petitioner is held entitled for reinstatement in his service from the date of his illegal termination along-with seniority and continuity of service except back wages. The petitioner is also entitled for lump sum compensation of Rs. 50,000/-. Hence this issue is decided accordingly.

Issues No. 3 and 4

20. The maintainability of the claim petition was challenged by the respondent primarily on the ground that the petitioner himself had acted in a wrong and improper manner committed undisciplined and misbehaved with Managing Director of the company consequent to which his services were terminated after show cause notice was issued to him. The circumstances of the case brought on record point towards suppression of the material facts by the petitioner as it is case of the petitioner that his service was dispensed with without following due process or holding proper enquiry. The opportunity of being heard was not afforded to the petitioner hence the claim petition is maintainable and issues no.3 and 4 are decided in the favour of the petitioner.

RELIEF

21. In view of my discussion on the issues nos. 1 to 4 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement in his service from the date of his illegal termination along-with seniority and continuity of service except back wages. The petitioner is also entitled for lump sum compensation of Rs. 50,000/-. Parties are left to bear their costs.

22. The direct claim/reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.
(Camp at Una).

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT UNA)

Reference No. : 69/2021

Date of Institution : 17.4.2021

Date of Decision : 30.8.2025

Shri Ajay Kumar s/o Shri Nand Lal, r/o Village and Post Office Gondpur Bulla, Tehsil Haroli, District Una, H.P. . . *Petitioner.*

Versus

Manager, Deepak Fasteners Ltd., Unit-II, Phase VI, Industrial Area, Taliwal, District Una, H.P. . . *Respondent*.

Direct Claim petition under Section 10 read with Section 2(A) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For the Respondent : Sh. Sanjeev Gupta, Ld. Adv.

AWARD

This is a direct claim petition under Section 10 read with Section 2-A Clause (2) of the Industrial Disputes Act, 1947. The brief facts as stated in the claim petition are that the petitioner Shri Ajay Kumar was employed as Junior Operator in Trimming Section by the respondent factory from 1.6.2016 and he was wrongly, illegally and malafidely terminated from the service on 12.9.2018 by the respondent management. It is submitted that while terminating the services of the petitioner he was getting salary of Rs.12000/-. No retrenchment compensation was given to the petitioner at the time of his termination. It is asserted that the services of the petitioner were

illegally terminated by the respondent management. The petitioner had completed 240 days of work in the factory and was regular worker on the post of Junior Operator. It is submitted that the management had not adopted the 'first come last go' policy and harassed the worker on different pretext. It is asserted that on 8.9.2018 a notice was served by the management to the petitioner with regard to major misconduct and reply to the same was filed by the petitioner. On 12.9.2018 the management had terminated the services of the petitioner without appropriate proceedings. Thereafter the petitioner had approached the Labour Officer-cum-Conciliation Officer, Una regarding his illegal termination but was in vain. It is alleged that the Labour Officer had not given credence to the matter under the influence of general manager and the Manager HR of the factory. Moreover a Kalandra was framed against the petitioner and other workers on the instance of the said General Manager as well HR. The police had put up the same before the court of SDM Haroli but the same was meritless having no truth as no public peace and tranquillity was breached by the petitioner hence proceedings against the petitioner stand dropped by the learned court. It is further submitted that in matter under Section 2A of the Industrial Disputes Act, 1947 with regard to illegal termination, conciliation officer favoured the industrial management and the petitioner had demanded certificate for further proceedings. After receiving the certificate the petitioner had made many requests for reinstatement but the management had not heard the petitioner. It is asserted that before termination of the services of the petitioner one month's notice was not served upon the petitioner nor he was paid wages in lieu thereof which was bad in law under Section 25-F (a) of the Industrial Disputes Act, 1947. No compensation was paid to the petitioner by the management under the provisions of law under Section 25-F (b) of the Industrial Disputes Act. It is submitted that the petitioner is unemployed from the date of his illegal termination till date. It is asserted that the permission from the appropriate authority which was required under Section 25-N of the Industrial Disputes Act but the same was not obtained by the management of the factory and in the absence of the same the termination of the services of the petitioner was void and bad in law. It is therefore prayed that the services of the petitioner may be reinstated and penalty be imposed upon the respondent in the interest of justice.

2. In reply to the claim petition on behalf of respondent preliminary objections qua maintainability, suppression of material facts and petitioner not coming to the court with clean hands have been raised. On merits, it is asserted that the petitioner/claimant was dismissed from his service due to major misconduct which was very grave and criminal in nature. It is mentioned that the act and conduct of the petitioner/claimant towards the management was against the law and spoiled peaceful working atmosphere and as such show cause notice was issued to the claimant for the same. It is clarified that in past also one FIR was registered against the claimant *i.e.* in the year 2015. It is asserted that the reply of the petitioner to the show cause notice was not found satisfactory and his services were dispensed with and he (petitioner) was dismissed from services vide company's letter dated 13.9.2018 but no domestic inquiry was held because misconducts were grave and criminal in nature. It is asserted that the police had made kalandra vide case no.89/2018/Cr. under Section 145, 107/150 Cr. P.C. against the claimant. It is denied that the court of SDM observed and found no truth in the matter. It is denied that the management had taken revengeful view and terminated the services of petitioner. It is denied that the respondent had violated the provisions of Sections 25-F (a), 25-F (b) and Section 25-N of the Industrial Disputes Act, 1947. Other averments and allegations made in the petition have been denied and it is prayed that petition deserves to be dismissed.

3. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed. It is also denied that respondents had served any relieving notice on the petitioner.

4. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of services of the petitioner by the respondent vide letter dated 12.09.2018 without complying with the necessary provisions of the Industrial Disputes Act, 1947 and without conducted the enquiry as per Certified Standing Order Act, 1946 is/was illegal and unjustified, as alleged? . . *OPP.*

2. If issues No.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . *OPR.*

4. Whether the petitioner has not approached to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . *OPR.*

5. Relief

5. In order to prove his case the petitioner has produced on record his affidavit PW-1 and copy of office order dated 10.6.2016 Ext. PW1/A, copy of show cause notice dated 10.9.2018 Ext. PW1/B, copy of termination letter dated 12.9.2018 Ext. PW1/C, copy of letter dated 11.9.2018 Ext. PW1/D, copy of reply dated 17.1.2019 Ext. PW1/E, copy of conciliation proceedings Ext. PW1/F, copy of complaint dated 17.9.2018 Ext. PW1/G and copy of order dated 23.3.2019 Ext. PW1/H.

6. Respondent has examined Shri Raj Kumar Bhatia, Manager HR, Deepak Fastener Ltd. by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He has also produced on record copy of letter dated 10.9.2018 Ext. RW1/B, copy of receipt dated 11.9.2018 Ext. RW1/C, copy of letter dated 13.9.2018 Ext. RW1/D, copy of reply to demand notice dated 29.9.2018 Ext. RW1/E, copy of receipt dated 4.10.2018 Ext. RW1/F, certificate U/S 63-B of BSA Ext. RW1/G and copy of mandays chart Ext. RW1/H. The respondent has also examined Shri Kirandeep Singh, General Manager, Deepak Fasteners Ltd. by way of affidavit Ext. RW2/A and also produced documents copy of kalandra dated 23.3.2019 Ext. RW2/B and copy of complaint Mark-RA. The respondent has examined Shri Tarsem Singh s/o Shri Pramod Singh, r/o Village Dulehar, Thana Haroli, District Una H.P. by way of affidavit Ext. RW3/A.

7. I have heard the learned AR/Counsel for the petitioner and learned Counsel for the respondent at length and records perused.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Partly Yes
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Relief.	:	Claim petition is partly allowed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1

9. The petitioner has produced his affidavit wherein he has stated on oath that he was engaged by the respondent on 1.2.2008 as Junior Operator in Trimming Section. He had worked

since the year 2008 to 11.9.2018 to the entire satisfaction of his superiors and his services were terminated unlawfully by the respondent on 12.9.2018 without following the mandatory provisions of the Industrial Disputes Act, 1947. He has stated on oath the workers of respondent company formed a union under the name and style of DFL Workers Union (CITU) and petitioner was the active member of said union and was authorized to support time to time genuine demands of the workers before the management/company. He has alleged that due to his union activity management had targeted him and created a false story of misbehaviour spoken unparliamentarily language and manhandling with GM of the company with the motive to terminate his services. The charges of misbehaviour spoken unparliamentarily language and manhandling have not been proved by the respondent since no domestic enquiry was conducted by the respondent to prove the charges against him. No charge sheet was ever served neither any fair and proper inquiry was held before terminating his services. He has submitted that in the above circumstances his termination order needs to be quashed and his services be reinstated in the interest of justice. In his cross-examination he has admitted that in complaint Ext. PW1/G he mentioned the date of termination as 15.9.2018 and he had not moved any complaint before the Labour Officer with regard to his termination dated 12.9.2018. He admitted that the complaint under Section 107/151 Cr.P.C. was filed against him before SDM Haroli. He denied that on 8.9.2018 he had misbehaved with G.M. Karandeep Singh, though he admits that complaint with regard to the alleged incident was filed against him. He has denied that he did anything on the said date. He has admitted that he received the termination letter dated 13.9.2018. He also denied that he was pressurising the company for accepting illegal demands due to which the company was unable to conduct the domestic inquiry against him. RW1 Shri R.K. Bhatia and RW2 Shri Kirandeep Singh who are working as Manager HR and General Manager in Deepak Fasteners Ltd. respectively have appeared in witness box on behalf of the respondent company. They have stated in their affidavits that on 7.9.2018 at about 11.15 PM a stray dog gave bite to the security guard Raj Kumar and security guard immediately rang Plant Head Mr. Kirandeep who enquired about the driver of ambulance and asked security guard about their liability. The electrician Mr. Iqbal Singh was present he took the phone from security guard and intimated plant Head that he was having personal car and was ready to take security guard for treatment to a doctor. He also informed driver of ambulance was not available. Thus on instructions of plant head Mr. Kirandeep Singh and security guard was taken to doctor for treatment. On next day however *i.e.* 8.9.2018 Mr. Kirandeep Singh was taking routine round of workshop when the petitioner shouted at him in loud voice and with other persons surrounded him in the presence of entire workshop workers. The petitioner shouted at G.M. pushed him and threw him on the workshop floor. He tried to assault him and abused in filthy language. The plant head with the help of Tarsem Lal, Hussan Lal and Deepak Sandal escaped from the clutches of the petitioner. During scuffle the petitioner threatened plant head that he will not let him live in this plant and will eat his job and also warned if he comes to the workshop again he would be beaten in black and blue. Show cause notice dated 10.9.2018 was issued to petitioner for having spoiled peaceful atmosphere of the workshop. A Kalandra *vide* case no. 89/2018 Cr. Under Section 145, 107/150 Cr.P.C. was also filed against the petitioner along-with Avtar and Surinder. In past also many FIRs have been registered against the petitioner. Subsequently petitioner had promised the management not to indulge in any such acts in future. The reply of petitioner to the show cause notice was found to be unsatisfactory. The act of the petitioner was not tolerable and keeping in mind the future of workers working in the factory as well as working atmosphere, the services of petitioner were dispensed with and he was dismissed from service vide letter dated 13.9.2018. In these circumstances the domestic inquiry could not be conducted as misconduct of the petitioner was grave and criminal in nature which could have caused harm to inquiry officer as well as the witnesses. Many other workers have also given written complaint against the petitioner which shows that petitioner was indulging in criminal act which was subversive of discipline and amounts to major misconduct. It is submitted that petitioner had filed false and frivolous claim as he never completed 240 days of work in every calendar year. In addition to this witness RW3 Shri Tarsem Lal has produced his affidavit Ext. RW3/A who has stated that he has worked as machine operator

at Deepak Fasteners Factory Tahliwal for last 18 years. He has stated on oath that on 8.9.2018 he was working on his machine when GM Shri Kirandeep Singh was on general round. At that time Avtar Singh, Surinder and Ajay entered into scuffle and hurled abusive language at the GM. They also threatened the GM that they will take his life.

10. Learned counsel for the petitioner has argued that the respondent witnesses are alleging that petitioner had indulged in major misconduct of scuffle and abusing and threatening to GM of the respondent company however the respondent has not followed any procedure established by law to prove the charges before dispensing with the services of the petitioner. Learned counsel has alleged that respondent not only violated the provisions of the Industrial Disputes Act, 1947 but also dispensed with the services of the petitioner in hasty manner without compliance of the Standing Orders applicable to the respondent company and indulged in unfair labour practice.

11. It is important to peruse the cross-examination of the respondent witness Shri R.K. Bhatia who has admitted that the respondent company is registered under Companies Act, 1956 and all kinds of labour laws, Bonus Act, Industrial Model Standing Orders, Minimum Wages Act etc. are applicable to the respondent company. He also admitted that in HR department adult worker register are maintained which shows full detail of the appointment date and the date of disengagement of the workers. He admitted that while filing written statement on behalf of the company the appointment letter of the petitioner has not been produced. He has not denied that the workers union registration number is 1161. He has admitted that many times the union has engaged in talks with them regarding the demands of the workers. He has admitted that in the year 2017 also various demands letters have been given on behalf of union for increase salary, bonus etc. of the workers.

12. He has further admitted that he is not appointing authority of the petitioner. He admitted that Ext. RW1/B is the show cause notice to the petitioner regarding major misconduct which is issued under his signatures and the signatures of MD. He has further admitted that appointing authority had not prepared any charge-sheet or conducted any domestic enquiry to prove the major misconduct and vide Ext. RW1/D the services of the petitioner were terminated. He has admitted that the reply of the petitioner to the show cause notice was found to be unsatisfactory however the said show cause notice does not mention that what kind of major misconduct the petitioner was found to have committed as per Industrial Model Standing Orders. He has admitted that he cannot explain what was the result of the criminal case registered against petitioner. He has not denied that petitioner has worked for 240 days in each year from 2008 to 2018. He however asserts that as per his knowledge the petitioner has worked continuously in the year 2017 and 2018. RW2 Shri Kirandeep Singh is the Managing Director against him the petitioner alleged to have committed acts of serious misconduct and in his cross-examination he has admitted that petitioner was appointed as Junior Operator since 1.2.2008. He also admits his signatures on the notice Ext. RW1/B. He admits that *vide* Ext. RW1/B the proceeding in kalandra prepared against the petitioner have since been dropped by SDM. He has admitted that no charge-sheet with regard to the allegations made against the petitioner had been issued to him and no domestic enquiry was conducted by the respondent company. He had denied that petitioner was not given an opportunity of being heard however he also admits that the petitioner was not given any suspension allowances as per Industrial Employment Standing Orders applicable to their company. He admits that as per adult register there is entry with regard to the appointment of each of the employee, though shows ignorance with regard to seniority list prepared from such register. He has admitted that they have not paid one month's notice pay or compensation to the petitioner at the time of his disengagement.

13. RW3 Shri Tarsem Lal in his cross-examination has admitted that vide Ext. RW1/B his name has not been mentioned as witness of the incident.

14. The learned counsel for the respondent has vehemently argued that the petitioner on dated 8.9.2018 had misbehaved with the General Manager and also scuffled with him. Petitioner had threatened the General Manager which amounted to grave/major misconduct. The incident had occurred in the presence of hundreds of the workers of company and would have incited the atmosphere of indiscipline. The circumstances were such that holding a domestic enquiry would have resulted in serious danger to the witnesses as well as inquiry officer. He has submitted that information regarding incident was given to the police who had acted accordingly and prepared kalandra under Section 145, 107/150 Cr. P.C. against the petitioner. The conduct of the petitioner required immediate disciplinary action and accordingly after a show cause notice the contents of which were found unsatisfactory the petitioner was terminated from his services by way of disciplinary action. Necessary documents i.e. show cause notice is produced on record as Ext. RW1/B which was served vide Ext. RW1/C on the petitioner thereafter termination letter is Ext. RW1/D. The learned counsel further submitted that it was the habit of the petitioner to indulge in indiscipline and criminal acts which had led the management to terminate his services after issuance of show cause notice.

15. As already submitted by learned counsel for petitioner the conduct of the respondent is alleged to be against the basic statute, rights of petitioner under the Constitution of India as well as violation of principle of natural justice.

16. Section 2(oo) of the Industrial Disputes Act, 1947 described retrenchment as follows:—

"[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;"

17. In the circumstances of the present case it is the contention of the respondent that the services of the petitioner were terminated by way of disciplinary action. Respondents' witnesses have admitted that Standing Orders applicable to the company have been adopted and certified copy of standing orders have been produced on the case file which clearly provides for procedure for enquiry, procedure for awarding penalty for acts of minor misconduct and also procedure for major misconduct along-with punishment. The standing orders clearly provide for a detail procedure before dispensing with the services of an employee by way of disciplinary action. It is admitted by the respondent's witnesses including official in their cross-examination that no charge-sheet was prepared against the petitioner nor any domestic enquiry was conducted in order to prove the allegations of grave misconduct against him.

18. Entry no. 5 (f) of the Vth Schedule of the Industrial Disputes Act, 1947 also provides regarding discharge or dismissal or workman in utter disregard of the principle of natural justice in the conduct of domestic enquiry or with undue haste pointing towards an unfair labour practice on the part of the respondent company. The termination of the services of petitioner subsequent to the reply filed to show cause notice implies that the company had acted in undue haste without complying with the provisions of Model Standing Orders applicable to the company. This also amounts to unfair labour practice on the part of the respondent management. Article 311 Clause (i)

of the Constitution of India also provides that the services of an employee cannot be dispensed with unless the charges are subject to detail enquiry. The respondent management has not only violated the provisions of the Industrial Disputes Act, 1947 but also failed to confirm that the principle of natural justice, equity and good conscience were complied while terminating services of petitioner in the present case. Admittedly the criminal proceedings which resulted in preparation of kalandra against the petitioner were dropped and the proceedings were merely prohibitory in nature. With regard to the alleged incident on 8.9.2018 it was incumbent upon the respondent to follow the procedure provided under the Certified Standing Orders and offer an opportunity being heard to the petitioner before major penalty of dismissal from services was pronounced. Since the services of the petitioner were terminated without following the proper disciplinary procedure the same amounts to retrenchment under the provisions of Section 25-F which is not complied by the respondent management. It is hence proved from the evidence on record that the termination of the services of the petitioner vide letter dated 12.9.2018 was without compliance with the necessary provisions of the Industrial Disputes Act, 1947 and Certified Standing Orders of the company and was accordingly illegal and unjustified and this issue is decided in the favour of the petitioner.

Issue No. 2

19. It has been proved from the evidence of the case file that the services of petitioner were terminated without following due process in violation of the statute as well as constitutional rights. In these circumstances the petitioner is held entitled for reinstatement in his service from the date of his illegal termination along-with seniority and continuity of service except back wages. The petitioner is also entitled for lump sum compensation of Rs.50,000/-. Hence this issue is decided accordingly.

Issues No. 3 and 4

20. The maintainability of the claim petition was challenged by the respondent primarily on the ground that the petitioner himself had acted in a wrong and improper manner committed undisciplined and misbehaved with Managing Director of the company consequent to which his services were terminated after show cause notice was issued to him. The circumstances of the case brought on record do not point towards suppression of the material facts by the petitioner as it is case of the petitioner that his service was dispensed with without following due process or holding proper enquiry. The opportunity of being heard was not afforded to the petitioner hence the claim petition is maintainable and issues no. 3 and 4 are decided in the favour of the petitioner.

RELIEF

21. In view of my discussion on the issues nos. 1 to 4 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement in his service from the date of his illegal termination along-with seniority and continuity of service except back wages. The petitioner is also entitled for lump sum compensation of Rs. 50,000/-. Parties are left to bear their costs.

22. The direct claim/reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.
(Camp at Una).

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT UNA)

Reference No. : 71/2021

Date of Institution : 17.4.2021

Date of Decision : 30.8.2025

Shri Surinder Kumar s/o Shri Rithu Ram, r/o Village and P.O. Polian Beet, Tehsil Haroli, District Una, H.P. . . *Petitioner.*

Versus

Manager, Deepak Fasteners Ltd., Unit-II Phase VI, Industrial Area, Taliwal, District Una, H.P. . . *Respondent.*

Direct Claim petition under Section 10 read with Section 2(A) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For the Respondent : Sh. Sanjeev Gupta, Ld. Adv.

AWARD

This is a direct claim petition under Section 10 read with Section 2-A Clause (2) of the Industrial Disputes Act, 1947. The brief facts as stated in the claim petition are that the petitioner Shri Surinder Kumar was employed as Junior Operator by the respondent factory from 1.5.2015 and he was wrongly, illegally and malafidely terminated from the service on 12.9.2018 by the respondent management. It is submitted that while terminating the services of the petitioner he was getting salary of Rs. 12500/-. No retrenchment compensation was given to the petitioner at the time of his termination. It is asserted that the services of the petitioner were illegally terminated by the respondent management. The petitioner had completed 240 days of work in the factory and was regular worker on the post of Junior Operator from 2015. It is submitted that the management had not adopted the 'first come last go' policy and harassed the worker on different pretext. It is asserted that on 8.9.2018 a notice was served by the management to the petitioner with regard to

major misconduct and reply to the same was filed by the petitioner. On 12.9.2018 the management had terminated the services of the petitioner without appropriate proceedings. Thereafter the petitioner had approached the Labour Officer-cum-Conciliation Officer, Una regarding his illegal termination but was in vain. It is alleged that the Labour Officer had not given credence to the matter under the influence of general manager and the Manager HR of the factory. Moreover a Kalandra was framed against the petitioner and other workers on the instance of the said General Manager as well HR. The police had put up the same before the court of SDM Haroli but he same was meritless having no truth as no public peace and tranquillity was breached by the petitioner hence proceedings against the petitioner stand dropped by the learned court. It is further submitted that in matter under Section 2A of the Industrial Disputes Act, 1947 with regard to illegal termination, conciliation officer favoured the industrial management and the petitioner had demanded certificate for further proceedings. After receiving the certificate the petitioner had made many requests for reinstatement but the management had not heard the petitioner. It is asserted that before termination of the services of the petitioner one month's notice was not served upon the petitioner nor he was paid wages in lieu thereof which was bad in law under Section 25-F (a) of the Industrial Disputes Act, 1947. No compensation was paid to the petitioner by the management under the provisions of law under Section 25-F (b) of the Industrial Disputes Act. It is submitted that petitioner is unemployed from the date of his illegal termination till date. It is asserted that the permission from the appropriate authority which was required under Section 25-N of the Industrial Disputes Act but the same was not obtained by the management of the factory and in the absence of the same the termination of the services of the petitioner was void and bad in law. It is therefore prayed that the services of the petitioner may be reinstated and penalty be imposed upon the respondent in the interest of justice.

2. In reply to the claim petition on behalf of respondent preliminary objections qua maintainability, suppression of material facts and petitioner not coming to the court with clean hands have been raised. On merits, it is asserted that the petitioner/claimant was dismissed from his service due to major misconduct which was very grave and criminal in nature. It is mentioned that the act and conduct of the petitioner/claimant towards the management was against the law and spoiled peaceful working atmosphere and as such show cause notice was issued to the claimant for the same. It is asserted that the reply of the petitioner to the show cause notice was not found satisfactory and his services were dispensed with and he (petitioner) was dismissed from services vide company's letter dated 13.9.2018 but no domestic inquiry was held because misconducts were grave and criminal in nature. It is asserted that the police had made kalandra vide case no.89/2018/Cr. under Section 145, 107/150 Cr. P.C. against the claimant. It is denied that the court of SDM observed and found no truth in the matter. It is denied that the management had taken revengeful view and terminated the services of petitioner. It is denied that the respondent had violated the provisions of Sections 25-F (a), 25-F (b) and Section 25-N of the Industrial Disputes Act, 1947. Other averments and allegations made in the petition have been denied and it is prayed that petition deserves to be dismissed.

3. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed. It is also denied that respondents had served any relieving notice on the petitioner.

4. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of services of the petitioner by the respondent vide letter dated 12.09.2018 without complying with the necessary provisions of the Industrial Disputes Act, 1947 and without conducted the enquiry as per Certified Standing Order Act, 1946 is/was illegal and unjustified, as alleged? . . *OPP.*

2. If issues No.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . *OPR.*

4. Whether the petitioner has not approached to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . *OPR.*

5. Relief

5. In order to prove his case the petitioner has produced on record his affidavit PW-1 and copy of office order dated 6.6.2015 Ext. PW1/A, copy of identity card Ext. PW1/B, copy of termination letter dated 12.9.2018 Ext. PW1/C, copies of conciliation proceedings Ext. PW1/D, copy of complaint dated 17.9.2018 Ext. PW1/E, copy of order dated 23.3.2019 Ext. PW1/F and copy of reply dated 17.1.2019 Ext. PW1/G.

6. Respondent has examined Shri Raj Kumar Bhatia, Manager HR, Deepak Fasterner Ltd. by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He has also produced on record copy of letter dated 10.9.2018 Ext. RW1/B, copy of receipt dated 11.9.2018 Ext. RW1/C, copy of letter dated 13.9.2018 Ext. RW1/D, copy of reply to demand notice dated 29.9.2018 Ext. RW1/E, copy of receipt dated 4.10.2018 Ext. RW1/F, certificate U/S 63-B of BSA Ext. RW1/G and copy of mandays chart Ext. RW1/H. The respondent has also examined Shri Kirandeep Singh, General Manager, Deepak Fasteners Ltd. by way of affidavit Ext. RW2/A and also produced documents copy of kalandra dated 23.3.2019 Ext. RW2/B and copy of complaint Mark-RA. The respondent has examined Shri Tarsem Singh s/o Shri Pramod Singh, r/o Village Dulehar, Thana Haroli, District Una H.P. by way of affidavit Ext. RW3/A.

7. I have heard the learned AR/Counsel for the petitioner and learned Counsel for the respondent at length and records perused.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Partly Yes
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is partly allowed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1

9. The petitioner has produced his affidavit wherein he has stated on oath that he was engaged by the respondent on 17.10.2013 as Junior Operator. He had worked since the year 2013 to 11.9.2018 to the entire satisfaction of his superiors and his services were terminated unlawfully by the respondent on 12.9.2018 without following the mandatory provisions of the Industrial Disputes

Act, 1947. He has stated on oath the workers of respondent company formed a union under the name and style of DFL Workers Union (CITU) and petitioner was the active member of said union and was authorized to support time to time genuine demands of the workers before the management/company. He has alleged that due to his union activity management had targeted him and created a false story of misbehaviour spoken unparliamentarily language and manhandling with GM of the company with the motive to terminate his services. The charges of misbehaviour spoken unparliamentarily language and manhandling have not been proved by the respondent since no domestic enquiry was conducted by the respondent to prove the charges against him. No charge sheet was ever served neither any fair and proper inquiry was held before terminating his services. He has submitted that in the above circumstances his termination order needs to be quashed and his services be reinstated in the interest of justice. In his cross-examination he has admitted that in complaint Ext. PW1/E he mentioned the date of termination as 15.9.2018 and he had not moved any complaint before the Labour Officer with regard to his termination dated 12.9.2018. He admitted that the complaint under Section 107/151 Cr.P.C. was filed against him before SDM Haroli. He has denied that he did anything on the said date. He has admitted that he received the termination letter dated 13.9.2018. He also denied that he was pressurising the company for accepting illegal demands due to which the company was unable to conduct the domestic inquiry against him. RW1 Shri R.K. Bhatia and RW2 Shri Kirandeep Singh who are working as Manager HR and General Manager in Deepak Fasteners Ltd. respectively have appeared in witness box on behalf of the respondent company. They have stated in their affidavits that on 7.9.2018 at about 11.15 PM a stray dog gave bite to the security guard Raj Kumar and security guard immediately rang Plant Head Mr. Kirandeep who enquired about the driver of ambulance and asked security guard about their liability. The electrician Mr. Iqbal Singh was present he took the phone from security guard and intimated plant Head that he was having personal car and was ready to take security guard for treatment to a doctor. He also informed driver of ambulance was not available. Thus on instructions of plant head Mr. Kirandeep Singh and security guard was taken to doctor for treatment. On next day however *i.e.* 8.9.2018 Mr. Kirandeep Singh was taking routine round of workshop when the petitioner shouted at him in loud voice and with other persons surrounded him in the presence of entire workshop workers. The petitioner shouted at G.M. pushed him and threw him on the workshop floor. He tried to assault him and abused in filthy language. The plant head with the help of Tarsem Lal, Hussan Lal and Deepak Sandal escaped from the clutches of the petitioner. During scuffle the petitioner threatened plant head that he will not let him live in this plant and will eat his job and also warned if he comes to the workshop again he would be beaten in black and blue. Show cause notice dated 10.9.2018 was issued to petitioner for having spoiled peaceful atmosphere of the workshop. A Kalandra vide case no.89/2018 Cr. Under Section 145, 107/150 Cr. P.C. was also filed against the petitioner along-with Ajay and Avtar. In past also one FIR has been registered against the petitioner. Subsequently petitioner had promised the management not to indulge in any such acts in future. The reply of petitioner to the show cause notice was found to be unsatisfactory. The act of the petitioner was not tolerable and keeping in mind the future of workers working in the factory as well as working atmosphere, the services of petitioner were dispensed with and he was dismissed from service vide letter dated 13.9.2018. In these circumstances the domestic inquiry could not be conducted as misconduct of the petitioner was grave and criminal in nature which could have caused harm to inquiry officer as well as the witnesses. Many other workers have also given written complaint against the petitioner which shows that petitioner was indulging in criminal act which was subversive of discipline and amounts to major misconduct. The call was also made to police on which police took cognizance and made kalandra under Section 107/150 Cr. P.C. Compact disk containing the original audio recording of the mobile conversation between the petitioner and respondent was also produced on record. It is submitted that petitioner had filed false and frivolous claim as he never completed 240 days of work in every calendar year. In addition to this witness RW3 Shri Tarsem Lal has produced his affidavit Ext. RW3/A who has stated that he has worked as machine operator at Deepak Fasteners Factory Tahliwal for last 18 years. He has stated on oath that on 8.9.2018 he was working on his

machine when GM Shri Kirandeep Singh was on general round. At that time Avtar Singh, Surinder and Ajay entered into scuffle and hurled abusive language at the GM. They also threatened the GM that they will take his life.

10. Learned counsel for the petitioner has argued that the respondent witnesses are alleging that petitioner had indulged in major misconduct of scuffle and abusing and threatening to GM of the respondent company however the respondent has not followed any procedure established by law to prove three charges before dispensing with the services of the petitioner. Learned counsel has alleged that respondent not only violated the provisions of the Industrial Disputes Act, 1947 but also dispensed with the services of the petitioner in hasty manner without compliance of the Standing Orders applicable to the respondent company and indulged in unfair labour practice.

11. It is important to peruse the cross-examination of the respondent witness Shri R.K. Bhatia who has admitted that the respondent company is registered under Companies Act, 1956 and all kinds of labour laws, Bonus Act, Industrial Model Standing Orders, Minimum Wages Act etc are applicable to the respondent company. He also admitted that in HR department adult worker register are maintained which shows full detail of the appointment date and the date of disengagement of the workers. He admitted that while filing written statement on behalf of the company the appointment letter of the petitioner has not been produced. He has not denied that the workers union registration number is 1161. He has admitted that many times the union has engaged in talks with them regarding the demands of the workers. He has admitted that in the year 2017 also various demands letters have been given on behalf of union for increase salary, bonus etc. of the workers. He has admitted that Avtar Singh was the pradhan of the union.

12. He has further admitted that he is not appointing authority of the petitioner. He admitted that Ext. RW1/B is the show cause notice to the petitioner regarding major misconduct which is issued under his signatures and the signatures of MD. He has further admitted that appointing authority had not prepared any charge-sheet or conducted any domestic enquiry to prove the major misconduct and vide Ext. RW1/D the services of the petitioner were terminated. He has admitted that the reply of the petitioner to the show cause notice was found to be unsatisfactory however the said show cause notice does not mention that what kind of major misconduct the petitioner was found to have committed as per Industrial Model Standing Orders. He has admitted that he cannot explain what was the result of the criminal case registered against petitioner. He has not denied that petitioner has worked for 240 days in each year from 2007 to 2018. He however asserts that as per his knowledge the petitioner has worked continuously in the year 2017 and 2018. RW2 Shri Kirandeep Singh is the Managing Director against whom the petitioner is alleged to have committed acts of serious misconduct and in his cross-examination he has admitted that petitioner was appointed as Junior Operator since 17.10.2012. He also admits his signatures on the notice Ext. RW1/B. He admits that vide Ext. RW1/B the proceeding in kalandra prepared against the petitioner have since been dropped by SDM. He has admitted that no charge-sheet with regard to the allegations made against the petitioner had been issued to him and no domestic enquiry was conducted by the respondent company. He had denied that petitioner was not given an opportunity of being heard however he also admits that the petitioner was not given any suspension allowances as per Industrial Employment Standing Orders applicable to their company. He admits that as per adult register there is entry with regard to the appointment of each of the employee, though shows ignorance with regard to seniority list prepared from such register. He has admitted that they have not paid one month's notice pay or compensation to the petitioner at the time of his disengagement.

13. RW3 Shri Tarsem Lal in his cross-examination has admitted that *vide* Ext. RW1/B his name has not been mentioned as witness of the incident.

14. The learned counsel for the respondent has vehemently argued that the petitioner on dated 8.9.2018 had misbehaved with the General Manager and also scuffled with him. Petitioner

had threatened the General Manager which amounted to grave/major misconduct. The incident had occurred in the presence of hundreds of the workers of company and would have incited the atmosphere of indiscipline. The circumstances were such that holding a domestic enquiry would have resulted in serious danger to the witnesses as well as inquiry officer. He has submitted that information regarding incident was given to the police who had acted accordingly and prepared kalandra under Section 145, 107/150 Cr. P.C. against the petitioner. The conduct of the petitioner required immediate disciplinary action and accordingly after a show cause notice the contents of which were found unsatisfactory the petitioner was terminated from his services by way of disciplinary action. Necessary documents i.e. show cause notice is produced on record as Ext. RW1/B which was served vide Ext. RW1/C on the petitioner thereafter termination letter is Ext. RW1/D. The learned counsel further submitted that it was the act of the petitioner to indulge in indiscipline and criminal acts which had led the management to terminate his services after issuance of show cause notice.

15. As already submitted by learned counsel for petitioner the conduct of the respondent is alleged to be against the basic statute, rights of petitioner under the Constitution of India as well as violation of principle of natural justice.

16. Section 2(oo) of the Industrial Disputes Act, 1947 described retrenchment as follows:—

"[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;"

17. In the circumstances of the present case it is the contention of the respondent that the services of the petitioner were terminated by way of disciplinary action. Respondents' witnesses have admitted that Standing Orders applicable to the company have been adopted and certified copy of standing orders have been produced on the case file which clearly provides for procedure for enquiry, procedure for awarding penalty for acts of minor misconduct and also procedure for major misconduct along-with punishment. The standing orders clearly provide for a detail procedure before dispensing with the services of an employee by way of disciplinary action. It is admitted by the respondent's witnesses including official in their cross-examination that no charge-sheet was prepared against the petitioner nor any domestic enquiry was conducted in order to prove the allegations of grave misconduct against him.

18. Entry no.5 (f) of the Vth Schedule of the Industrial Disputes Act, 1947 also provides regarding discharge or dismissal or workman in utter disregard of the principle of natural justice in the conduct of domestic enquiry or with undue haste pointing towards an unfair labour practice on the part of the respondent company. The termination of the services of petitioner subsequent to the reply filed to show cause notice implies that the company had acted in undue haste without complying with the provisions of Model Standing Orders applicable to the company. This also amounts to unfair labour practice on the part of the respondent management. Article 311 Clause (i) of the Constitution of India also provides that the services of an employee cannot be dispensed with unless the charges are subject to detail enquiry. The respondent management has not only violated

the provisions of the Industrial Disputes Act, 1947 but also failed to confirm that the principle of natural justice, equity and good conscience were complied while terminating services of petitioner in the present case. Admittedly the criminal proceedings which resulted in preparation of kalandra against the petitioner were dropped and the proceedings were merely prohibitory in nature. With regard to the alleged incident on 8.9.2018 it was incumbent upon the respondent to follow the procedure provided under the Certified Standing Orders and offer an opportunity being heard to the petitioner before major penalty of dismissal from services was pronounced. Since the services of the petitioner were terminated without following the proper disciplinary procedure which amounts to retrenchment under the provisions of Section 25-F which is not complied by the respondent management. It is hence proved from the evidence on record that the termination of the services of the petitioner vide letter dated 12.9.2018 was without compliance with the necessary provisions of the Industrial Disputes Act, 1947 and Certified Standing Orders of the company and was accordingly illegal and unjustified and this issue is decided in the favour of the petitioner.

Issue No. 2

19. It has been proved from the evidence of the case file that the services of petitioner were terminated without following due process in violation of the statute as well as constitutional rights. In these circumstances the petitioner is held entitled for reinstatement in his service from the date of his illegal termination along-with seniority and continuity of service except back wages. The petitioner is also entitled for lump sum compensation of Rs. 50,000/-. Hence this issue is decided accordingly.

Issues No. 3 and 4

20. The maintainability of the claim petition was challenged by the respondent primarily on the ground that the petitioner himself had acted in a wrong and improper manner committed undisciplined and misbehaved with Managing Director of the company consequent to which his services were terminated after show cause notice was issued to him. The circumstances of the case brought on record do not point towards suppression of the material facts by the petitioner as it is case of the petitioner that his service was dispensed with without following due process or holding proper enquiry. The opportunity of being heard was not afforded to the petitioner hence the claim petition is maintainable and issues no. 3 and 4 are decided in the favour of the petitioner.

RELIEF

21. In view of my discussion on the issues nos. 1 to 4 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement in his service from the date of his illegal termination along-with seniority and continuity of service except back wages. The petitioner is also entitled for lump sum compensation of Rs. 50,000/-. Parties are left to bear their costs.

22. The direct claim/reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.
(Camp at Una).

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT UNA)

Reference No. : 70/2018

Date of Institution : 11.7.2018

Date of Decision : 30.8.2025

Shri Amit Sharma and other workers of M/s Inox Wind Limited, VPO Basal, Tehsil and District Una, H.P. . . *Petitioners.*

Versus

The Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil and District Una, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner(s) : Sh. Rohit Kumar, Ld. Adv.

For the Respondent : Sh. Rajeev Sharma, Ld. Adv.

AWARD

The following industrial disputes have been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:—

"Whether transfer of 41 workmen (list enclosed) and retrenchment of 4 workmen (list enclosed) of the M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P. during the process of conciliation proceedings by the Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P. is legal and justified and maintainable? If not, what relief and benefits the above workmen are entitled to from the above employer/Management?"

"Whether the stoppage of work by Shri Amit Sharma and other workers of M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P. for fulfilment of their demands of salary, increment and other facilities is legal & justified? If yes, what benefits all the workmen are entitled to from the Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P.?"

2. The brief facts as stated in the claim petition filed on behalf of claimants is that the services of 41 workmen/applicants were engaged by respondent in different department on different posts and different duties which is detailed in the claim petition as follows:—

Sl. No.	Name and Address	Designation	Emp. Code	DOJ
1.	Sikander Pal s/o Sh. Chaman Lal, r/o Village Tangera, P.O. Barnoh, Tehsil and District Una, H.P.	Senior Technician	1W0253	12.2.2011

2.	Gopal s/o Late Sh. Roshan Lal, r/o V.P.O. Raisanry, Tehsil and District Una, H.P.	Senior Technician Production	1W0286	1.3.2011
3.	Amit Sharma s/o Late Sh. Vinod Kumar, r/o V.P.O. Takka, Tehsil and District Una, H.P.	Technician (Production Electrical)	1W1687	4.9.2014
4.	Vishal Verma s/o Sh. Suresh Verma, r/o V.P.O. Basdehra, Tehsil and District Una, H.P.	Technician (Production Mechanical)	1W2871	25.9.2015
5.	Jatinder Singh s/o Sh. Darshan Singh, r/o V.P.O. Saloh, Tehsil and District Una, H.P.	Technician (Store)	1W12243	8.3.2013
6.	Ashish Vyas s/o Sh. Anil Vyas r/o Village Fuliya Gate Gulab Kan, Shahpura, District Bhilwara, Rajasthan	Senior Technician	1W1471	19.12.2013
7.	Prasanta Kumar Nayak s/o Sh. Markdhwaj Nayak r/o V.P.O. Lank-pada, *Via* Tyenda Kura, District JagatsSinghpur, Odissa	Senior Technician	1W1479	25.9.2013
8.	Santosh Kumar Singh s/o Sh. Bachhu Ram r/o Village Bhawalpur (Takath Tola) P.O. Marhowaraha, District Chappra, Bihar.	Technician	1W1718	23.9.2014
9.	Shanraj Sawale s/o Sh. Ravinder Sawale, r/o V.P.O. Dabhiykhera Tehsil Nepa Nagar, District Bhurahanpur, MP.	Senior Technician (Production Mechanical)	1W2774	7.9.2013
10.	Aman Deep s/o Sh. Pawan Kumar r/o V.P.O. Beeton, Tehsil Haroli, District Una, H.P.	Junior Technician (Production Mechanical)	1W2244	16.3.2015
11.	Suraj Rattan s/o Avtar Krishan r/o V.P.O. Teuri, Tehsil and District Una, H.P.	Junior Technician (Production Electrical)	1W2545	1.7.2015
12.	Suraj Dutt s/o Sh. Dutt Ram r/o Village Piple P.O. Darwar, Tehsil Sarkaghat, District Mandi, H.P.	Junior Technician (Store)	1W2545	1.7.2015
13.	Avtar Singh s/o Sh.Jagat Singh r/o V.P.O. Badoli, Tehsil and District Una H.P.	Junior Tec17.hnician (Production Electrical)	1W3917	1.7.2015
14.	Fateh Singh s/o Sh. Tejasveer Singh r/o V.P.O. Badoli, Tehsil and District Una H.P.	Junior Technician (Production Electrical)	1W1491	1.7.2015
15.	Rajesh Thakur s/o Sh.Rakesh Singh, r/o Village Kalchra, P.O. Kungrat, Tehsil Haroli, District Una, H.P.	Junior Technician (Production Electrical)	1W2658	3.8.2015

16.	Vivek Kumar s/o Sh. Prem Sagar r/o V.P.O. Kotla Kalan, Tehsil and District Una, H.P.	Junior Technician (Production Electrical)	1W2701	3.8.2015
17.	Lucky Thakur s/o Sh. Ashok Kumar r/o V.P.O. Batuhi, Tehsil and District Una H.P.	Junior Technician (Stores)	1W3784	7.9.2015
18.	Kapil Kumar s/o Sh. Ravinder Singh r/o V.P.O. Kotla Kalan, Tehsil and District Una H..P	Junior Technician (Production Electrical)	1W3914	25.9.2015
19.	Rajesh Kumar s/o Sh. Desh Raj Sharma r/o Village Kudher,.P.O. Sohari, Tehsil Bangana, District Una H.P.	Junior Technician (Production Mechanical)	1W2867	25.9.2015
20.	Sunil Kumar s/o Sh. Narain Singh r/o Village Mehla, P.O. Manjhoti, Tehsil Baijnath, District Kangra, H.P.	Technician (Production Electrical)	1W2870	25.9.2015
21.	Gian Chand s/o Sh. Tilak Raj r/o V.P.O. Bhaduri, Tehsil Haroli, District Una, H.P.	Junior Technician (Production Mechanical)	1W2874	26.9.2015
22.	Rajneesh Kumar s/o Sh. Kuldeep Singh r/o V.P.O. Panoh, Tehsil and District Una H.P.	Technician (Production Mechanical)	1W2876	26.9.2015
23.	Shiv Kumar Saini s/o Sh. Arvind Kumar r/o Village Lower Arniala, P.O. Kotla Kalan Tehsil and District Una H.P.	Junior Technician (Production Mechanical)	1W2877	26.9.2015
24.	Ram Kumar s/o Sh. Subhash Chand r/o V.P.O. Sainsowal, Tehsil Haroli, District Una H.P.	Junior Technician (Production Electrical)	1W2898	28.9.2015
25.	Rakesh Kumar s/o Sh. Chet Ram r/o V.P.O. Kuthar Khurad, Tehsil and District Una H.P.	Junior Technician (Production Mechanical)	1W3767	2.3.2016
26.	Manish Kumar s/o Ashwani	Junior Technician	1W4423	2.3.2016
27.	Anil Kumar s/o Sh.Hari Singh r/o V.P.O. Panjwar, Tehsil and District Una H.P.	Technician	1W4480	20.9.2016 (expired on 25.5.2018)
28.	Rama Shankar s/o Sh. Ram Pal r/o V.P.O. Takka, Tehsil and District Una H.P.	Technician (Production Mechanical)	1W2186	16.2.2015
29.	Vijay Kumar s/o Sh. Dev Raj r/o Village Lalsinghi, P.O. Raisary, District Una H.P.	Technician	1W0104	22.8.2010
30.	Satvinder Kumar s/o Sh. Harmesh Chand r/o V.P.O. Panoh, Tehsil Una H.P.	Technician	1W0245	11.2.2011
31.	Amit Kumar s/o Sh. Rajinder Kumar r/o V.P.O. Badsala, Tehsil and District Una H.P.	Technician	1W0265	22.2.2011
32.	Virender Kumar s/o Sh. Manohar Lal r/o V.P.O.	Senior Technician	1W0335	21.3.2011

	Panoh, Tehsil and District Una, H.P.			
33.	Rohit Kumar s/o Sh. Sukhdev Agnihotri r/o V.P.O. Panoh, Tehsil and District Una H.P.	Technician	1W0420	11.5.2011
34.	Mahesh Kumar s/o Sh. Rikhi Ram Sharma r/o V.P.O. Lambloo, District Hamirpur H.P.	Senior Technician Mechanical	1W0945	15.6.2012
35.	Divakar Parshad Tripathi s/o Sh. Chote Lal Tripathi r/o V.P.O. Badwar, Tehsil Guru, District Rewa.	Tehcnician (Mechanical)	1W0267	20.6.2012
36.	Dadan Kumar Singh s/o Sh. Ram Haresh Singh r/o Village Baligawan, P.O. Jabara, Police Station Nokha, District Rohtas, Bihar.	Senior Technician (Production Mechanical)	1W1161	11.2.2013
37.	Ramesh Kumar s/o Sh. Joginder Pal r/o V.P.O. Kotla Kalan Tehsil an District Una H.P.	Technician (Production Mechanical)	1W1241	14.3.2013
38.	Vijay Kumar s/o Ganesh Dutt r/o Village Heru, P.O. Lathayani, Tehsil Bangana, District Una H.P.	Junior Technician	1W1632	15.7.2014
39.	Gulshan Kumar s/o Sh. Suresh Chand r/o V.P.O. Panoh Tehsil and District Una H.P.	Junior Technician (Production Mechanical)	1W1637	28.7.2014
40.	Ram Parkash s/o Late Sh. Firtoo Ram r/o Village Asni, P.O. Nizamabad, District Azamgarh, U.P.	Technician (Production Mechanical)	1W1725	25.9.2014
41.	Rahul Aery s/o Sh. Upender Kumar r/o V.P.O. Dehlan, Tehsil and District Una H.P.	Junior Technician (Stores)	1W2995	15.9.2014

It is further submitted that the respondent is the company as under the Companies Act, 1956 as well as various authorities of Central Government of India and Government of Himachal Pradesh and different acts like Employees Provident Fund and Miscellaneous Provisions Act, 1952, ESIC Act, 1948, Payment of Wages Act, 1936, Minimum Wages Act, 1948, Bonus Act, 1965, Payment of Gratuity Act, 1972 and Industrial Disputes Act, 1947 etc. are applicable to the respondent company. The government of HP has framed its own industrial rules known as Himachal Pradesh Industrial Disputes Rules, 1974 which are also applicable to the company. Thus the company being industrial establishment within the meaning of Section 2 (ka) of the Industrial Disputes Act, 1947 governed by H.P. Industrial Standing Orders Act, 1946. Vide letter No. IWL/CIF-GOHP/2017 dated 8th June, 2017 the Vice President Operations (Unit Head), Inox Wind Limited, VPO Basal, Tehsil and District Una had filed an application before Principal Secretary (Labour and Employment) Govt. of H.P., Shimla and the Chief Inspector of Factories-cum-Labour Commissioner, Department of Labour, Govt. of H.P. Shimla seeking permission to lay off Inox Wind Ltd. Una, H.P. The State Government however had not granted permission of lay off as per the provisions of Section 25-M of the Industrial Disputes Act, 1947. It is submitted that the work and conduct of the applicants was fully satisfactory and upto the mark during their service

with the respondent. There was no complaint of any misconduct against them. It is alleged that on 14.5.2018 Mr. Sikander Pal has submitted an application and the same was signed by Amit Sharma, Vishal Verma and Gopal to the Labour and Employment Officer, Una and reported that on 11.5.2018 all the employees had asked Manager HR and management regarding their unpaid salary for last two month instead of this Manager HR and management used unparliamentarily language and without any intimation in the midnight transferred the services of Sikander Pal and three co-workers. The above mentioned transfer orders were received by all four workmen on their mobile phone. On 12.5.2018 these four workmen went to the company to perform duties but security guard on the instructions of Mr. Harsih Sharma Manager HR did not allow them to enter the factory premises and the other 37 workmen who were also not allowed to enter the factory premises by the security guard. Their services were also transferred to another place and transfer orders were posted on their home address. In response to the complaint dated 14.5.2018 made by Sikander Pal in the office of Labour Officer, Una he was advised to file proper demand notice with specific demands on behalf of the workers. These four workmen filed proper demand notice on 14.5.2018 and copy of the same was forwarded to the learned Labour Commssioner, Shimla, Deputy Director of Factories, Una, Superintendent of Polic Una and Labour Offiecr Una and five demands were raised as under:—

(i) The minimum wages fixed by the government have to be paid to the workers

(ii) There has been no increase in the wages/salary of the workmen for last two years and they are entitled for the arrears.

(iii) The workers had not received their wages/salary for last 2 months which should be paid regularly.

(iv) Four workmen have been wrongly transferred without any reason and their transfer should be cancelled.

(v) All the benefits *i.e.* bus, canteen, uniform, boots should be given to the workers.

3. The workers of the respondent company including petitioners had filed a complaint dated 19.5.2018 before Labour Officer, Una and mentioned that "one notice on 14.5.2018 was placed regarding lock-out of company *w.e.f.* 10.5.2018 but today *i.e.* 17.5.2018 the company without intimation to any senior officer is going to appoint fresh persons and prayed to the Labour Officer, Una that their grievance may kindly be solved immediately otherwise immediate permission may kindly be granted to go on for indefinite strike". It is alleged that respondent company had started fresh recruitment on 17.5.2018 which pointed towards the fact that the work and funds were available with them and the services of the petitioners were deliberately and malafidely transferred to other place with only intention to send them out to different place. The case of the petitioners was also not put for grievance settlement authority under Section 3 and 9C read with Chapter IIB of the Industrial Disputes Act, 1947. No opportunity as granted to workmen to appear before the grievance redressal committee. It is alleged that the action of the transfer of the services of the petitioners and making fresh appointment in their places without giving an opportunity to the petitioners to resume their duties was unjustified and against the mandatory provisions of the Industrial Disputes Act, 1947. It is submitted that Industrial Employment Standing Orders 1946 was applicable to the company. It is mentioned therein that no company can change service condition of its employees. Contrary to which the company without certified standing orders and without fixing the terms and conditions of services transferred the services of 41 workmen in violation of Section 9A of the Industrial Disputes Act, 1947 as well as in violation of Standing Orders Act, 1946. The petitioners have also claimed that respondent had violated the

principle of natural justice as well as the rules of the norms under Articles 14 and 21 of the Constitution.

4. It is also alleged that four petitioners i.e. Sikander Pal, Gopal, Amit Sharma and Vishal Verma have also been retrenched and discharged by Mr. Kallol Chakarverty, Head Group Corporate HR vide letter dated 21.5.2018 and their full and final settlement had been made and sent the same to their saving bank account. The salary period from 1.5.2018 to 21.5.2018 had been credited in the account of all four workmen and their services had been retrenched in violation of Section 25-N of the Industrial Disputes Act, 1947 without any permission from the concerned authority. It is further submitted that the respondent had taken the plea that workmen had lost interest in job and they were not reporting for duties should be construed as abandonment of the job but in this regard it is pertinent to mention that in case the workmen i.e. Sikander Pal, Gopal, Amit Sharma and Vishal Verma had not complied with the transfer orders the respondent could not have discharged their duties without holding domestic inquiry. It is alleged that the demand notice dated 14.5.2018 was pending before Labour Officer when the services of petitioners no. 1 to 4 were discharged by the company. The respondent company had approached and filed CWP No.2534 of 2018 to quash report dated 8th June, 2018 of Labour-cum-Conciliation Officer, Una and reference dated 5th July, 2018 however the same has been decided by Hon'ble High Court on 25.10.2018. In the light of above allegations the petitioners prayed this court to quash and set aside illegal orders of transfer of 41 petitioners and discharged/retrenchment orders of four workmen and pass the directions to reinstate their services along-with continuity and full back wages and another consequential benefits including interest of 12%. It is also prayed that the respondent be directed to pay balance of workers from March, 2018 and also to pay different of arrears from the date of their joining to May, 2018 as per minimum wages. The petitioners had also prayed for grant of 10% increment as per minimum wages *i.e.* from 1.4.2016, 1.4.2017 and 1.4.2018.

5. In reply to the claim the respondent has raised preliminary objection qua maintainability, wrong allegation regarding retrenchment by petitioners no.1 to 4 and reference not being in accordance with the provisions of the Act. On merits it is submitted that 41 claimants in the claim petition were transferred on various locations. Out of the 41 workmen seven workmen joined transfer places, four workmen who failed to join despite repeated instructions and advices were stands discharged and they have wrongly impleaded as petitioners in the present petition, two workers took full and final dues from the respondent, three settled grievance with the respondent and settlement registered under Section 18(1) of the Industrial Disputes Act, 1947, one had died during this period and now 24 remained who failed to join their duties. The averments regarding filing of application for lay off with labour and employment department of Himachal Pradesh has also been admitted. It is asserted that at the initial stage they were interested to take permission for lay off but later on the respondent left this idea for betterment of the workforce. It is submitted that the petitioners has not come to the court with clean hands and they disguised the material facts from this court. According to respondents the real facts of case are that in the year 2017 the wind industry was running in problems all over India due to this reason there were no orders from the market and the manufacturing process was zero in the factories. There was no production in the factory from April, 2017 to April, 2018. Respondent tried its best to arrange and also tried its best to bring some other products but all in vain. The respondent hence applied for lay off workers in their factory but later on they changed their idea of lay off in the factory for the betterment of the workforce and withdrew the application. The financial position of the company had deteriorated day by day and workers of the factory used to sit idle without any work. It was decided by the respondent on oral representation of the workers that they would be absolved to come to the factory and their attendance will be marked at Una and the attendance of the workers formally being marked in a petrol pump where register was kept. Later on workers asked the management that they are wasting their time for marking their presence so they may be absolved from this practice. The respondent again in order to give facility to its workers acceded to their demand. Respondent kept

on paying the wages of the workers from April, 2017 to 2018. In the initial date of April, 2018 there was hope of starting the factory and production hence workers were informed to report to factory on 24th April, 2018. The workers reported as required and machinery was cleaned and made operative for manufacturing process. On 10th May in order to start manufacturing process the workers reported on duty but to the surprise of respondent the workers instead of manufacturing process sat in the production hall and starting shouting slogans. The workers were knowing well that work is to be started in the factory after long gap and they were getting the wages when there was no work. There was long gap of eight month in receiving purchase orders in the hands of the respondent. The officers of the respondent company tried best to prevail upon the mind of workers and they pasted notice on the production hall and calling upon the workers to do the work. This illegal happening subsequently reported to local labour officer. Situation remained same on 11.5.2018 despite counselling the efforts of the labour department. The respondent pasted notice of no work no pay however the situation did not change. It is submitted that the respondent company was under financial crises and any illegal strike was not acceptable. There were surplus workers in the factory and due to less order the respondent took the decision to run the factory in one shift and the illegal act on the part of workers was creating huge loss for the company. In these circumstances company took decision to transfer around 40 workers to another site as per terms and conditions of their appointment letters. As already mentioned above only 24 workers are now not reporting to the place of transfer and they are not obeying the orders of the respondent. Four workers were already discharged as they have not joined in place of posting. The matter regarding condition of the respondent company was also brought to the notice of labour officer who tried his best to prevail upon the minds of workers. The efforts of manufacturing were also made to Administration of Himachal Government through SDM Una. It is alleged that the workers were not ready to hear any legal thing and all the allegations made by them are false. It is further submitted that on 14.5.2018 no demand notice as wrongly alleged by the petitioners was ever served by them on the management. The demand notice in accordance with the provisions of the Industrial Disputes Act, 1947 is served on the employer with the copy of conciliation officer of area concerned. The type of letter with copies of such authorities cannot be termed as demand notice thus demand notice was not in accordance with law. Other averments and allegations made in the claim petition have been denied parawise. It is further submitted that on the termination of the services of four workers and payment of full and final dues to all the four workers was made infact they had to raise the dispute of their termination under Section 2A of the Act and they cannot be termed as parties under Secton 2K. The respondent has prayed that the claim put forward by petitioners not legal and the same be dismissed.

6. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

7. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether transfer of 41 workmen and retrenchment of 4 workmen by the respondent is illegal and unjustified, as alleged? . . *OPP.*

2. Whether the stoppage of work by Sh. Amit Sharma and other workers for fulfilment of their demands of salary, increment and other facilities is legal and justified, as alleged? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . *OPR.*

Relief

8. The petitioner in their case have examined five witnesses PW1 Shri Sikander Pal (PW1), PW2 Shri Amit Sharma, PW3 Shri Mahesh Kumar, PW4 Shri Gopal and PW5 Shri Vishal Verma have tendered in evidence their affidavits Ext. PW1/A, Ext. PW2/A, Ext. PW3/A, Ext. PW4/A and Ext. PW5/A. All the petitioners have reiterated the facts stated in the claim petition by way of their affidavits.

9. Respondent has examined Shri Surinder Pal, Assistant Manger (HR) who produced his affidavit by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He has also produced on record transfer notices Ext. RW1/A to Ext. RW1/H, copy of reminder letters Ext. RW1/J-1 to Ext. RW1/J-5, transfer notices Ext. RW1/K-1 to Ext. RW1/K-17, copy of appointment letters Ext. RW1/L-1 to Ext. RW1/L-8, copy of settlement Ext. RW1/M, copy of full and final settlement Ext. RW1/N, copy of settlement and compensation in lieu of death Ext. RW1/O and copy of notice Ext. RW1/P.

10. I have heard the learned Counsel for the petitioner and learned Counsel for the respondent at length and records perused.

11. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Relief.	:	Claim petition is dismissed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1

12. Out of the 41 workers who have allegedly preferred the present claim. Four workers namely Sikander Pal (PW1), Amit Sharma (PW2), Mahesh Kumar (PW3), Gopal (PW4) and Vishal Verma (PW5) have appeared on behalf of the claimants and also themselves. These petitioners witnesses have alleged in their affidavits that on 8th June, 2018 Vice President, Operations (Unit Head), Inox Wind Ltd. VPO Basal, Tehsil and District Una, H.P. had filed an application before the Principal Secretary, Labour and Employment, Govt. of H.P. Shimla and Chief Inspector of Factories-cum-Labour Commissioner, Department of Labour and Employment Govt. of Himachal Pradesh seeking permission to lay off in Inox Wind Ltd. Una, H.P. which was not granted to them. RW1 Shri Surinder Pal Assistant Manger HR on behalf of company has admitted in his cross-examination that the company had sought permission for lay off from the State Government. He denied that such permission was refused as criteria therein was unfulfilled. It has however been mentioned in the reply as well as affidavit on behalf of respondent that the company taking into consideration the benefits of its workmen had withdrawn the application seeking permission for lay off. This witness has denied that production in the factory was continued upto 21.5.2018 but he asserted that the factory was closed for one year from April, 2017 to April, 2018. All the petitioners witnesses have denied that the factory remained closed between April, 2017 to April, 2018 and that they were being paid for work for the said period. Interestingly however, PW1 Sikander Pal has accepted as correct that factory starting functioning again on 24.4.2018. This evidence has to be read in view of the contention raised by the respondent witness who stated on oath that factory of

respondent company was totally closed from August, 2017 to April, 2018 and they continued to pay wages to the workers even for this period. This fact is again asserted in his cross-examination but not controverted during course of his cross-examination by the learned counsel for the petitioners. He denied that there was no factory on the place where the workers were transferred and asserted that there was wind farm. He denied that there was no work for skilled workmen in the wind farm and as such they could not have been transferred to the said place.

13. PW1 Sikander Pal has admitted that these workmen who were transferred have not joined at the new place of posting. He admits that he, Vishal Verma, Amit Sharma and Gopal were paid retrenchment compensation of full and final payment. He admitted that out of 41 transferred workmen, seven workmen had joined new place of posting, two have resigned from the work. He expressed his ignorance to the suggestion that three workmen have settled the matter under Section 18 Clause 1 of the Industrial Disputes Act, 1947. He asserts that four of their workmen were terminated and admits that 24 workmen have not joined the new place of posting.

14. PW2 Amit Sharma has admitted that one worker Shri Anil Kumar s/o Shri Hari Singh has expired. Two workmen have resigned, three workmen have accepted full and final payment and 24 workmen have not joined at the place of their new posting. He admitted that they were served with transfer orders and directed to join at new place of posting where they did not report for work.

15. PW3 Shri Mahesh Kumar has admitted that his job was transferable and that transfer order was served on him. He did not report at the above place of transfer. PW4 Gopal has also admitted that his services were transferable. He admits that his services were transferable. He admits that he did not join at the place of his transfer and he was not ready to join at this new place of posting even today. He admits that he received payment but he did not know whether it was compensation or payment for the leave due. He also admits that seven workmen joined new place of posting. He asserts that they were outsider. PW5 Shri Vishal Verma has also admitted that their job was transferable. He admits that the transfer letter was issued to him along-with 40 other workmen. He admits that he had not joined at the place of posting and even now not prepared to join new place of posting. He asserts that there is no plant at this place. He however admitted that factory was manufacturing air mills and air mills established in certain places where frequent wind blows. Such mill produces electricity and are subject to maintenance. He admits that the services of welder are required for maintenance of these wind mills which is work attributed to him.

16. The fact that the respondent company had applied for lay off in the year 2017 and factory started functioning again in April, 2018 coupled with the statement of RW1 Surinder Pal that there was surplus workforce and the fact that this deposition was not controverted in his cross-examination shows that financial implication of the company had forced them to advert to lay off and transfer any workmen which may be surplus at the relevant time.

17. The allegations of unfair labour practices against the respondent company are not confirmed as admittedly seven workmen who had been transferred have joined at new place of posting and this fact is contrary to the contention of the petitioners that there was no work/plant at the new place of posting. Most of petitioners examined admitted that their services were transferable clause 9 of RW1/L-1 to Ext. RW1/L-8.

18. It is the case of the petitioners that they were transferred on 11.5.2018 and they preferred their complaint to Labour Officer Una on 14.5.2018 subsequently they had given demand notice in a formal manner on 19.5.2018 thus transfer of the petitioners were not during pendency of the conciliation proceedings. Except the statement of the petitioners there is no other evidence to establish that company starting new recruitment on 17.5.2018 in the place of petitioners. No such suggestion is even made to the respondent witness RW1 Surinder Pal. It is alleged on behalf of the

petitioners that their transfer had led to change in service conditions and it was carried out of violation of the provisions of Section 9A of the Industrial Disputes Act, 1947. It is however pertinent to observe that petitioner PW3 Mahesh Kumar, Vishal Kumar PW5 have admitted that their transfer was incidentally to their service. The services was transferable in nature the copy of the appointment orders of the workmen have also been produced on record by the company which shows that their job was transferable in nature and this fact was communicated to them at the time of their appointment also. In these circumstances the said transfer of the petitioners by the respondent company cannot be considered as change in their service conditions in violation of the provisions of Section 9A of the Industrial Disputes Act, 1947.

19. The petitioners witnesses have appeared on their own behalf as well as in their representative capacity on behalf of the remaining workers. It is admitted by these witnesses that 24 workmen have been transferred had not joined their place of posting. These witnesses also expressed that they are not willing to join new place of posting. The Hon'ble High Court of H.P. in **HP State Co-operative Marketing and Consumers Federation Ltd. vs. Nain Sukh, CWP No.3806 of 2010 dated 12.4.2018 and decided on 3.5.2018** has held in para nos.7 and 8 as follows:—

> *"It is not in dispute that herein it is not a case where services of the workman were terminated by the workman without any rhyme and reason, in violation of the provisions of the Industrial Disputes Act. It is a matter of record that the workman while serving at Thanadhar, was ordered to be transferred to Parwanoo and he was directed to join at Parwanoo, failing which, he was informed that his services liable to be terminated. Workman did not abide by the orders so passed by the employer. In other words, he did not comply with the directions of the employer to join services at Parwanoo. It was in this background that when the workman did not abide by the orders so passed by the employer, his services were terminated by the employer. In fact, a perusal of the claim petition itself demonstrates that the workman in paras 5 and 6 thereof has admitted the fact that he did not join the duties at Bottling Plant Parwanoo, as was directed by the employer. In his cross-examination, the workman has admitted it to be correct that he was transferred from Thandhar to Bottling Plant Parwanoo and that he did not join at Parwanoo.*
>
> *8. In my considered view, when the workman himself has admitted the factum of his not joining the place where he was ordered to be transferred by the employer, I find that the learned Tribunal erred in answering the Reference petition in favour of the workman by holding that the services of the workman could not have been terminated without holding domestic inquiry. This Court fails to understand as to what kind of a domestic inquiry learned Labour Court wanted the employer to hold when the workman had refused to join the place of posting where he was transferred. Further, this is a case where on the failure of workman to join the place of his transfer, his services were dispensed with. This dispensation cannot be termed to be in violation of the provisions of the Industrial Disputes Act. The award passed by the learned Labour Court is thus a result of mis-reading and mis-appreciation of evidence on record and as there is no perversity in the same, the same is not sustainable in law".*

20. Petitioners, Sh. Sikander Pal, Gopal, Amit Sharma and Vishal Verma have alleged retrenchment as they were discharged after few days of their transfer. PW1 Sikander Pal PW3 Gopal had admitted receiving compensation along-with full and final payments. In these circumstances they cannot allege the violation of the basic provision of Section 25 Clause F of the Industrial Disputes Act, 1947. Moreover in this case after their transfer they have refused to join new place of posting which led to their discharged. They already received the retrenchment compensation in accordance with the provisions of the Industrial Disputes Act.

21. As has been argued by the learned counsel for petitioners, in the peculiar circumstances of this case respondent need not to have conducted domestic inquiry, as has been clearly laid down by the Hon'ble High Court of H.P. in **State Co-operative Marketing and Consumers Federation Ltd. (supra).** The issue in reference was regarding the alleged illegal transfer of the 41 workers and retrenchment of four workmen by the respondent. The evidence on record duly expose that no illegality was committed by the respondent by transferring the services of 41 workmen and at the time of subsequent discharge of four workmen, hence the issue no.1 is decided in the favour of the respondent.

Issue No. 2

22. This is a multiple reference where reference has also been made in order to determine whether stoppage of workmen by Amit Sharma and other workers of M/s Inox Wind Ltd. after receiving full and final payment, salary and other facilities was legal and justified. The allegations regarding the stoppage of the work has been made on behalf of the respondent through the statement of RW1 Shri Surinder Pal. It is however the contention of the petitioners that they were not allowed to enter the premises of the company after 12.5.2018. In the light of the allegations and counter allegations made by the petitioners and respondent in this regard there are no independent documentary or oral evidence produced by the respondent company to prove the stoppage of workers by Shri Amit Sharma and other workers. In these circumstances the issue cannot be considered in the favour of the respondent.

Issue No. 3

23. The maintainability of the claim petition was challenged on the ground that the respondent company had been facing financial hardship consequent to which it had preferred to transfer 41 workmen which were surplus labour with the respondent factory. The evidence on the case file establishes that company had not been working for number of months and starting production again in April, 2018. It is also clear from the record that company was trying to take permission for lay off which points towards a weak financial condition of the company. In these circumstances the claim of the petitioners regarding the illegality of their transfer and discharge could not be considered to be maintainable and this issue is decided in the favour of the respondent.

RELIEF

24. In view of my findings on the issues no. 1 to 3 above the claim petition filed on behalf of the petitioners is not maintainable and the same is dismissed. Parties are left to bear their costs.

25. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of August, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.
(Camp at Una).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
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