राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 07 अप्रैल, 2025 / 17 चैत्र, 1947

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171002, the 13th January, 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, H.P. Industrial Tribunal-**cum-**Labour Court, Shimla,** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette". :—**

Sl. No	Case No	Petitioner	Respondent	Date of Award/ Orders
1.	Ref.178/2018	Sh. Sawan Kumar	Torrent Pharmaceuticals Ltd.	01.10.2024
2.	Ref.101/2023	Reckitt Workers Union	M/s Reckitt Benckisher.	01.10.2024
3.	Ref.117/2016	Sh. Upender Kumar	M/s Dainik Bahaskar, Chotta Shimla.	03.10.2024
4.	Ref.118/2016	Sh. Kuldeep Sharma	M/s Dainik Bahaskar, Chotta Shimla.	03.10.2024
5.	Ref.119/2016	Sh. Ashok Kumar	M/s Dainik Bahaskar, Chotta Shimla.	03.10.2024
6.	Ref. 64 of 2023	Sh. Tabe Hussain	M/s G4S Secure Solutions	03.10.2024
7.	Ref. 74/2017	Sh. Ravinder Sharma	M/s Dainik Jagran Publication	18.10.2024
8.	Ref. 197/2018	Sh. Vikram Kumar	M/s Lotus Herbals Colours	21.10.2024
9.	Ref. 22/2022	Sh. Surender Singh	M.D. Suryakant Hydro Energies.	21.10.2024
10.	App. 29/2024	Sh. Pawan Kumar & ors.	Factory Manager, HFL & Anr	21.10.2024
11.	App. 30/2024	Sh. Hemant Kumar & ors.	Factory Manager, HFL & Anr	21.10.2024
12.	App. 31/2024	Sh. Jiwan Singh & ors	Factory Manager, HFL & Anr	21.10.2024
13.	App. 32/2024	Sh. Jeevan Singh & ors.	Factory Manager, HFL & Anr	21.10.2024
14.	App. 33/2024	Sh. Sanjeev Kumar & ors.	Factory Manager, HFL & Anr	21.10.2024
15.	Ref.123/2020	Sh. Chander Singh	Ex. Engg,. HPSEBL, Solan	22.10.2024
16.	Ref.63/2024	Sh. Gulshan	M/s Theon Pharmaceuticals	23.10.2024
17.	Ref.24/2020	Sh. Ajay Kumar	M/s Loreal India	23.10.2024

By order,

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

Sawan Kumar

Versus

The Occupier, FM. M/s Torrent Pharmaceuticals

Ref No. 123/2021

File taken up today in view of order passed in application for prepontment.

01.10.2024
Present: Petitioner in person

Sh. Rajeev Sharma, Ld. Csl. for the respondent.

The reference is taken up today in view of the orders passed in application for prepontment filed by the respondent to which the petitioner has also given his consent. With the consent of the parties the reference is taken up today. The petitioner has made statement that he has entered into settlement Ex. PX and as per the terms of this settlement he has received Rs. 2,75,000/- as exgratia as such he is not interested to proceed this reference and nothing survive in this claim/ reference. Similar statement has been made by Sh. Rajeev Sharma, advocate for the respondent who also admitted the statement made by the petitioner to be correct and has deposed that the award be passed and nothing else survives in this petition.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. PX and a sum of Rs. 2,70,000/- as exgratia has been paid to the petitioner by the respondent, and thereafter, nothing survive in this petition, the present reference received from the appropriate government is answered accordingly. Statements of the parties as well as Ex. PX shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
01.10.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla.

Reckitt Workers Union

Versus

M/s Reckitt Benckiser Healthcare Pvt. Ltd.

Ref No. 101/2023

01.10.2024
Present: Sh. Niranjan Verma, Ld. Csl. for the petitioner

Sh. N.K. Gupta, Ld. Csl. for the respondent

At this stage, the learned counsel for the petitioner had made separate statement without oath that he wants withdraw the present claim in view of the judgment passed by the Hon'ble High Court of HP dated 14.05.2024 in CWP No. 7572/2023.

In view of the statement made by learned counsel for the petitioner and in view of the judgment passed by the Hon'ble High Court of HP (as referred to supra) this reference is disposed off and accordingly. Let a copy of this award be communicated to the appropriate government for its publication in the official gazette. File, after competing be consigned to records.

Announced:
01.10.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**.

Reference No : 117 of 2016

Instituted on : 23.11.2016

Decided on : 03.10.2024

Upender Kumar Singh, s/o Shri H.N. Singh, c/o Shri Naresh Sharma Near Railway Station, Shoghi, Shimla, H.P.-171219 . . *Petitioner*.

Versus

M/s Dainik Bhaskar, Malbrow, House Near DPRO Office, Chhota Shimla, Shimla-2, H.P. . . *Respondent*.

Reference under Section 17(2) of the Working Journalists and other Newspaper Employees (Conditions of Services and Miscellaneous Provisions) Act, 1955.

For the petitioner : Sh. Pavinder Kumar, Advocate

For the respondent : Sh. Surinder Saklani, Advocate

AWARD

The Labour-*cum*-Conciliation Officer, Shimla Zone Shimla has made the following reference to this Court after failure of the conciliation proceedings:

"**Whether the action of the employers M/s Dainik Bhaskar, D.B. Corporation Ltd. Regional Office, Plot No. 11-12, Sector-25D, Chandigarh and M/s Dainik Bhaskar,**

Malbrow House Near DPRO Office, Chhota Shimla, Shimla-2, H.P. for not paying claim of arrears amounting to Rs. 7,23,496/- (Rs. Seven lakh twenty three thousand four hundred ninety six only) to Shri Upender Kumar Singh s/o Shri H.N. Singh, c/o Shri Naresh Sharma Near Railway Station, Shoghi, Shimla, H.P. 171219, as difference of wages actually drawn and due as per recommendation of Majithia Wage Boards (Copy of claim enclosed) constituted under Section 9 & 13(C) of the Working Journalists and Other Newspaper Employees (Condition of Services and Miscellaneous Provisions Act, 1955) is legal and justified? If yes, to what amount of relief/arrear, along-with interest etc., the aggrieved employee is entitled to from the above employers/ management?"

2. The case as emerges from the statement of claim is that petitioner was engaged as reporter by the respondent on 13.01.2011 and he worked up till 27.07.2014. Petitioner was enrolled with the respondent publication. Petitioner served the respondent management, without any complaint and nothing adverse has been conveyed to him. At the time of his initial engagement, the petitioner was paid salary which was not in consonance with the recommendations of Majithia Wage Board. Petitioner along-with others demanded their salary as per the recommendations of Majithia Wage Board notification dated 11.11.2011. This notification though was challenged by the management along-with other newspapers, but the Hon'ble Supreme Court upheld the recommendations of Majithia Wage Board and directed the newspapers/publications to implement the recommendations of Majithia Wage Board *w.e.f.* 11.11.2011, when the Government of India notified the recommendations of Majithia Wage Board. The Hon'ble Supreme Court had ordered to pay all the arrears upto March, 2014 to the eligible persons in four equal installments within a period of one year, however, the management/publication did not implement the directions issued by the Hon'ble Supreme Court. Several contempt petitions were also filed before the Hon'ble Supreme court for non-implementation of the judgment passed by the Hon'ble Supreme Court. Petitioner filed the claim before the Labour Commissioner in view of the recommendations of Majithia Wage Board and claimed for the arrears strictly in view of the recommendations of Majithia Wage Board *w.e.f.* 11.11.2011. The total claim as raised by the petitioner is of ₹ 7,23,496/- along-with 23% interest payable *w.e.f.* 11.11.2011 till its realization. When conciliation proceedings failed, Labour-cum-Conciliation Officer referred the dispute to this Court for adjudication through present reference.

3. Notice of this claim was sent to the respondent in pursuance thereof the respondent contested the claim by filing reply. Apart from taking preliminary objections of maintainability, reference as made by the appropriate Government is devoid of jurisdiction, petitioner has not approached the Court with clean hands and it was claimed that the petitioner was working in administrative or managerial post as such the petitioner does not fall under the purview of either working journalist or non-working journalist. On merits, though the respondent did not dispute that the petitioner was engaged with the DB Corporation Ltd., EDT Digital Media and but claimed that none of his services as rendered by him is utilized for the newspaper printing within the stipulated period. It was claimed that each and every employee working in the newspaper industry is not eligible and entitled to get benefits under the recommendations of Majithia Wage Board. Petitioner does not fall under the purview of recommendations. It was denied that the petitioner is entitled for the claim of Rs. 7,23,496/- along-with interest @ 23% payable *w.e.f.* 11.11.2011 till its realization and prayed for the dismissal of the claim.

4. Petitioner filed rejoinder in which he denied preliminary objections raised by the respondent and also denied the averments as made in the reply and reaffirmed those as made in the statement of claim.

5. On the pleadings, this Court formulated the following issues on 16.01.2018.

1. Whether the action of the employers/ respondents for not paying claim of arrears amounting to Rs. 7,23,496/- to petitioner as difference of wages actually drawn and due as per recommendation of Majithia Wage Board constituted under Section 9 & 13 of the Working Journalists and other Newspapers Employees (Condition of services and Miscellaneous Provisions Act, 1955) is illegal and unjustified, as alleged? . . *OPP*.

2. If issue no. 1 is proved in affirmative, to what amount of relief/ arrear, along-with interest etc., the petitioner is entitled? . .*OPP*.

3. Whether the claim filed by the petitioner is misconceived, as alleged? . . *OPR*.

4. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. Petitioner appeared in the witness box as PW-1, whereas respondent examined S/Shri Bharamanand Devrani, Dy. News ditor as RW-1 and Joginder Sharma, Senior Reporter as RW-2. Shri Bharama Nand (RW-1) again appeared into the witness box as RW-3. Shri Aditya Dube as RW-4 and against examined Shri Joginder Singh as RW-5.

7. I have heard the Ld. Counsel Shri Aman Gupta, Advocate vice counsel Shri Pushpender, Advocate for the petitioner and Shri Surender Saklani, Advocate for the respondent and gone through the records of the case carefully.

8. 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	:	Not entitled to any relief.
Issue No. 3	:	No.
Relief	:	Reference is answered in Negative as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

9. Both these issues are intermingled and inter-connected and require common appreciation of the evidence, as such both these issues are taken up together for the purpose of determination.

10. Onus to prove issues no. 1 & 2 is on the petitioner.

11. The claim of the petitioner is based upon the fact that Central Government constituted Majithia Wage Board for revision of wages of newspaper establishments and the Majithia Wage Board recommended revision in wages on 01.07.2010. The said recommendations were accepted by the Central Government vide notification dated 11.11.2011. The recommendations of the Majithia Wage Board were notified by the Government, which were challenged by the various newspaper agencies before the Hon'ble Apex Court, however, the Hon'ble Apex Court has upheld the recommendations of the Majithia Board.

12. Before proceeding further, it would be appropriate to first discuss the evidence which is on record.

13. To prove his case, the petitioner stepped into the witness box as PW-1 and led his evidence by way of affidavit PW-1/A, which is just a reproduction of the averments as made in the petition.

14. During cross-examination, he stated that he has not brought his appointment letter. He denied that he was working in the digital media for the respondent. He deposed that Majithia Wage Board recommendations came into effect in the year 2011 and he was working with the respondent since Jan., 2011. He admitted that he was being paid salary by the respondent but self-stated that the same was not being paid in terms of the Majitha Wage Board recommendations. He deposed that he is not aware about the recommendations of Majithia Wage Board recommendations with respect to the loss making unit. He further deposed that he left the job with the respondent and now days he is working with Amar Ujala. He denied that he does not fall under the Majithia Wage Board recommendations. He admitted that he had given a declaration/undertaking under clause 20(j) on the current salary with his free consent.

15. This is the entire evidence which has been led by the petitioner.

16. In order to rebut the case of the petitioner, respondent examined Shri Bharamanand Devrani, Dy. News Editor of respondent as RW-1. He deposed that he is working in the Dainik Bhaskar since July, 2010 and presently he is the Deputy News Editor of the paper in Shimla. He further deposed that he knows the petitioner who was working in the digital media and print media. He deposed that the petitioner used to work as a reporter and also use to do the work of sub-editing. He further deposed that the petitioner used to manage the staff under him and even sanctioned their leave.

17. During cross-examination, he deposed that he does not know when Dainik Bhaskar started operations in Shimla. He denied that when the petitioner was working with the respondent, digital media was not in operational there.

18. The other witness examined by the respondent is Shri Joginder Sharma, Senior Reporter of respondent, who appeared into the witness box as RW-2. His statement is also to the effect that the petitioner was working in the digital media.

19. During cross-examination, he deposed that in the year 2006 he was working under Shri Tyagi (Editor). He showed ignorance that how many people were working in the digital media in the year, 2012.

20. Shri Bharamanand (RW-1) was again examined as RW-3, who tendered in evidence affidavit Ex. RW-3/A vide which he deposed that he is working with Dainik Bhaskar since 2010 and at present working as Deputy News Editor. He has made the similar statement as was made by him as RW-1.

21. However, during cross-examination, as RW-3, he has deposed that the petitioner is working as reporter since 2001-02 but then self-stated that he is not confirmed of the fact. He deposed that the petitioner worked with the respondent for 7-8 years and thereafter he had left the job.

22. Respondent also examined Shri Aditya Dube as RW-4, who led his evidence by way of affidavit Ex. RW-4/A vide which he deposed that he is working with the dainik bhaskar since

October 2017 and at present working as Senior Manager, HR and Admin (CPH2). He further deposed that in view of clause 20 (j) of Majithia Wage Board Recommendations, who has signed the option, will get the salary as per the option and all the employees working at Shimla have given their signatures on option letter as per their will. He further deposed that as per the Majithia Wage Board Recommendations, only the business of newspaper establishment i.e circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. He also deposed that the petitioner ceased to fall in the definition of workman as he was performing supervisory duties and he was working independently. Petitioner fall within the exception of Section 2 (f) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act 1955 (hereinafter to be referred as the Act) as he was discharging supervisory/managerial duties. He also placed on record copy of declaration dated 15.11.2011 as Ex. RW-4/B.

23. During cross-examination, he deposed that he has not brought the record pertaining to the appointment, salary perks etc. of the petitioner. He admitted that the petitioner had worked as reporter with the respondent management. He is not aware that the recommendations of Majithia Wage Board are applicable to the reporters. He denied that all the dues and remuneration were not paid to the petitioner in this case, as per the recommendation of Majithia Wage Board. Shri Joginder Singh was again examined as RW-5, but his statement is repetitive as of his earlier statement as RW-2.

24. So far as the claim of the petitioner is concerned though the claim of the petitioner is based on the recommendations of Majithia Wage Board and on notification dated 11.11.2011 but while leading evidence as well as by submitting the statement of claim the petitioner has not made it clear or established on record that in which group of employee he falls nor there is any evidence to establish what kind of work was assigned to him to fix him in any of the group(s) of employee(s) as per the recommendations of Majithia Wage Board. Apart from that the petitioner has also not classified the class of newspaper establishment with which he was working. Though, the respondent has taken the plea that the petitioner does not fall within the definition of workman under the Act and he fall under the exception of Section 2 (f) of the Act. Even, it is presumed that the petitioner did fall under the definition of working journalist then also the petitioner has not made a single averment as to which category the unit in which he was working, did fall and in which category he falls as per the recommendations of the Majithai Wage Board. In the absence of any such pleadings and proof thereof, it is difficult for his Court to fix the petitioner in any of the categories.

25. As per the case of the petitioner, he worked with the respondent w.e.f. 13.01.2011 to 27.07.2014. At the time when the petitioner had moved application before the Labour Officer, there was no relationship of employer and employee between the parties.

26. Since, the petitioner has admitted that he left the services of the respondent, much before raising this claim and after the cessation of employment, the petitioner who was not in relationship of master and servant with the respondent cannot agitate that he was entitled to enhanced salary as per recommendations of Majithia Wage Board.

27. The other point which was raised in this reference by the respondent is that the provisions of Section 17(2) of the Act are similar to the provisions of Section 33-C(2) of the Industrial Disputes Act. The powers uner section 33-C(2) of the I.D Act confined on the Labour Court are that of executing Court as such the petitioner could not raise any dispute under Section 17(2) of the Act which was not pre-adjudicated or predetermined. The petitioner has raised the claim for difference in pay as per the recommendations of Majithia Wage Board. The reference has been made to this Court under Section 17(2) of the Act. Section 17 of the Act reads 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 authorized by him in writing in this behalf or in 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 die, it shall issue a certificate for that amount to the Collector, and the Collector or 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 question so referred were a matter referred to the Labour Court for the adjudication under that Act or law.

(3) …….

28. The Hon'ble High Court of Judicature of Madras in **WP No. 6343 of 2022 dated 15.04.2022 case titled as S. Madhavan *Vs.* M/s THG Publishing Pvt. Ltd. (formerly M/s Kasturi & Sons Ltd.) 859 and 860 Anna Salai Chennai-6000002** has dealt with the similar matter. The Hon'ble high Court of Madras has considered the scope of Section 17(2) of the Act and held as under:

"10. **It is not disputed that the claim of the petitioner for difference in Dearness Allowance for the period 11.11.2011 is based on the Award of the Majithia Wage Board, which was approved by the Government of India on 11.11.2011 and confirmed by the Hon'ble Supreme Court in W.P.(Civil) No.246 of 2011 on 07.02.2014. The petitioner's raised a dispute claiming difference in Dearness allowance and the same was referred to the Labour Court by the Government of Tamil Nadu in G.O.(ID) 441 dated 21.07.2016 under Section 17 (2) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act, 1955. During the pendency of the said reference in the present 205/2011 the petitioner's were retrenched and hence the complaint under Section 33(1) (a) of the I.D. Act was filed. Let me now refer to the provisions of the Working Journalist Act as well as the ID Act which are relevant for the purpose of this case. Section 2(K) of the ID Act reads as follows:**

"2(k)"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; "

Section 17(2) of the Working Journalist Act which reads as follows:

"17(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."

11. The reading of Section 17(2), particularly the phrase "as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law", in my view cannot convert the question into a dispute as defined and understood under Section 2(K) of the I.D. Act. The words, as if the question so referred were a matter referred to the Labour Court for adjudication under the act or law" would only mean that while answering the question the Labour Court would adjudicate it in the same manner as it would adjudicate a reference under the I.D. Act. To say that the reference of the question to the Labour Court changes the character of the reference into an industrial dispute goes against the letter and spirit of the said provision. The legislature has used the term "refer the question". The legislature has consciously avoided the term 'dispute', because the legislature was aware that the term 'dispute' has its own connotations under the I.D Act. From a reading of the definition of Industrial Dispute under Section 2(k), it is clear that the question that is referred under Section 17(2) cannot be construed as an industrial dispute. An industrial dispute referred to therein is in relation to non employment, the terms of employment or conditions of labour. Whereas the question under Section 17(2) relates to computation of claim and hence, it would not fall under the definition of industrial dispute under the ID Act.

12. As rightly contended by the learned counsel for the respondent Section 17 of the Working Journalist Act is akin to Section 33(C) (2) of the I.D Act. It is well settled by catena of Judgments of this Court as well as Hon'ble Supreme Court that the jurisdiction exercised by the Labour Court under Section 33(C) (2) is that of an Executing Court. In the present case, it is seen that the recommendations of the Majithia Wage Board were accepted by the Government of India on 11.11.2011 and the same was challenged before the Hon'ble Supreme Court, which confirmed the recommendations of the Majithia Wage Board, but with modification that the same would be effective from 11.11.2011 only.

13. It is the respondents' case that the respondent had paid the dues to the petitioner and other employees as per the order of the Hon'ble Supreme Court in 2014-2015 itself, but the petitioner claimed higher Dearness Allowance and therefore petitioned the Government under the Working Journalist Act. The Government in terms of Section 17 of the Working Journalist Act referred the claim petition to the Principal Labour Court. The aforesaid facts clearly establish that the question referred to was a claim relating to the computation of difference in the Dearness Allowance paid by the respondent to the petitioner. In my view, the question referred to the Labour Court on the basis of the Majithia Wage Board recommendations relates to computation of Dearness Allowance under Section 17(2) of the Working Journalist Act and hence not an industrial dispute as defined in the Industrial Disputes Act. I am fortified in my view by the Judgment of the Hon'ble Division Bench of the Gujarat High Court in Keshavlal M.Rao *Vs.* State of Gujarat and Others reported in 1993 (1) LLN 373. The Hon'ble Chief Justice, S.Nainar Sundaram, J. while considering similar issue held as follows:

"Section 17 to a very great extent by verbalism and by implications stands in pari materia with Section 33C of the Industrial Disputes Act, 1947. Section 33C(1) of the Industrial Disputes Act, 1947 is comparable with Section 17(1) of the Act; and Section 33C(2) of the Industrial Disputes Act, 1947 is comparable with Section 17(2) of the Act. The scope of Section 33C of the Industrial Disputes Act, 1947 has come up for consideration by pronouncements not only at the level of the High Courts but also at the level of the Apex Court of the land. They are incisive and they have, without any ambiguity characterized the machinery under Section 33C(2) of the Industrial Disputes Act, 1947 as one relatable to execution stage and not at the adjudicatory level over the right to relief claimed by applicant and denied by the opponent. They have held that investigation into and determination of any dispute regarding the applicant's right to relief and the corresponding liability of the opponent will be outside the scope of the said provision. The set of expression found in Section 33C(2) of the Industrial Disputes Act, 1947 is "If any question arises as to the amount of money due", from the employer to the workman. As already noted, the set of expressions used in Section 17(2) of the Act is "If any question arises as to the amount due under this Act to a newspaper employee from his employer". Under Section 33C(2) of the Industrial Disputes Act, 1947, the specified Labour Court decides that question. Under Section 17(2) of the Act, the question gets referred to the Labour Court for its decision over it. The similar features between the two provisions are very portent and on the basic factor that the provisions are in pari materia, there is every warrant for applying the ratio of the judicial pronouncements delineating the scope of Section 33C(2) of the Industrial Disputes Act, 1947 to delineate the scope of Section 17(2) of the Act."

29. Since, it has been held by the Hon'ble High Court of Madras that the provisions of Section 17(2) of the Act are akin to the provisions of Section 33-C(2) of the Act and such proceedings under Section 33-C(2) are summery in nature. Thus, the pronouncement delineating the scope of Section 33-C (2) of the Industrial Disputes Act, 1947 would also be helpful for disposal of this case. The Hon'ble Apex Court in case titled as **Municipal Corporation of Delhi *Vs.* Razak (1995 SCC 1- 235)** has held as under:

"**Dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33- C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by tile employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33- C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution**".

30. Similar is the judgment(s) of Hon'ble Supreme Court reported in **2006 (109) FLR 530 case titled as Union of India and another *Vs.* Kankuben (dead) by LRs. and others** and **Bombay Chemical Industries *Vs.* Deputy Labour Commissioner and Anr., 2022 Live Law (SC) 130**.

31. In view of the discussion made hereinabove, it is amply clear that the jurisdiction of Labour Court under Section 17(2) of the Act is limited to the computation of amount due and it cannot decide the dispute as to the entitlement of the petitioner to be fixed in a particular group or

to determine that for what salary he is entitled to under the recommendations of Majithia Wage Board. In **Navbharat Press Employees union, Mafatlal Employees Union *Vs.* State of Maharashtra, Labour Industries and Energy Department and Ors., 2009 (III) Bom LR 4347**, the double bench of Hon'ble High Court of Bombay has held that the question as to which class the petitioner falls involves detailed investigation as regard gross revenue of respondent establishment, therefore, the same cannot be termed as mere implementation or execution of the Manisana Award. The relevant para of the aforesaid judgment is as under:

"15. **The dispute in this case is as regards entitlement of the members of the petitioner union to higher wages on the basis that respondent 5 falls in class II and not in class IV of clause 6 of the Manisana Award and, therefore, the basic question which has to be decided is as to in which class respondent 5 falls. That would involve a detailed investigation as regards gross revenue of respondent 5. For that purpose, various documents including the balance sheet of respondent 5 will have to be gone into. Therefore, this is not a mere implementation or execution of the said Manisana Award**."

32. The Hon'ble Apex Court in case titled as **Kasturi and Sons Private Ltd. *Vs.* N. Salivateswaran and another AIR 1958 507**, has held that the enquiry contemplated under Section 17 of the Act is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree and award. The relevant paras of the aforesaid judgment are reproduced as under:

"8**. It is significant that the State Government or the specific authority mentioned in s. 17 has not been clothed with the normal powers of a court or a tribunal to hold a formal enquiry. It is true that s. 3, sub-s. (1) of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to sub-s. (2); but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act. This section cannot be read as conferring on the State Government or the specified authority mentioned under s. 17 power to enforce attendance of witnesses, examine them on oath, issue commission or pass orders in respect of discovery and inspection such as can be passed by the boards, courts or tribunals under the Industrial Disputes Act. It is obvious that the relevant provisions of s. 11 of the Industrial Disputes Act, 1947, which confer the said powers on the conciliation officers, boards, courts and tribunals cannot be made applicable to the State Government or the specified authority mentioned, under s. 17 merely by virtue of s. 3(1) of the act.**

9. In this connection, it would be relevant to remember that s. 11 of the act expressly confers the material powers on the Wage Board established under s. 8 of the Act. Whatever may be the true nature or character of the Wage Board-whether it is a legislative or an administrative body-the legislature has taken the precaution to enact the enabling provisions of s. 11 in the matter of the said material powers. It is well known that, whenever the legislature wants to confer upon any specified authority powers of a civil court in the matter of holding enquiries, specific provision is made in that behalf. if the legislature had intended that the enquiry authorized under s. 17 should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, the legislature would undoubtedly have made an appropriate provision conferring on the State Government or the specified authority the relevant powers essential for the purpose of effectively holding such an enquiry. The fact that the legislature

has enacted s. 11 in regard to the Wage Board but has not made any corresponding provision in regard to the State Government or the specified authority under s. 17 lends strong corroboration to the view that the enquiry contemplated by s. 17 is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employee after establishing his claim in that behalf. We are reluctant to accept the view that the legislature intended that the specified authority or the State Government should hold a larger enquiry into the merits of the employee's claim without conferring on the State Government or the specified authority the necessary powers in that behalf. In this connection, it would be relevant to Point out that in many cases some complicated questions of fact may arise when working journalists make claims for wages against their employers. It is not unlikely that the status of the working journalist, the nature of the office he holds and the class to which he belongs may themselves be matters of dispute between the parties and the decision of such disputed questions of fact may need thorough examination and a formal enquiry. If that be so it is not likely that the legislature could have intended that such complicated questions of fact should be dealt with in a summary enquiry indicated by s. 17."

33. Though, reliance was placed by Ld. Counsel for the respondent on **AIR 1966-182 as well as on writ case no. 33532 of 2023**, but the facts of this authority are distinguishable from the facts of this case. Keeping in view my aforesaid discussion, both these issues are answered in negative and against the petitioner.

Issue No. 3

34. So far as issue No. 3 is concerned, it is evident that an application was moved by the applicant before the designated authority under the Act for issuance of recovery certificate in compliance of the order(s) dated 28.4.2015, 12.1.2016 and 23.8.2016 passed by the Hon'ble Apex Court in **CCP No. 128 of 2015 and 129 of 2015 and WP (C) No. 246 of 2011 dated 7.2.2014** and claimed for the dues since the issuance of notification by the Central Government on the recommendations of Majithia Wage Board. The applicant had also submitted Form C as per Rule 36 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957. It is evident from the record that the application was primarily made by the petitioner before the designated authority under the Working Journalists (conditions of Service) and Miscellaneous Provisions Act, 1955 for issuance of recovery certificate under section 17(1) of the Act. The petitioner had made a request that the directions issued by the Hon'ble Supreme Court vide order dated 23.8.2016 be complied with and in para no.2 of the application the applicant had made it clear that that the application has been moved under section 17(1) of the Act and in the last of the para no. 3, it was mentioned by the applicant that since the employee has not preferred the application under Section 17(2), the same cannot be referred for adjudication under the misguided pressure of the management as the same would attract contempt of Court against the Labour Commissioner. Thus, it is amply clear that the application was preferred by the petitioner under section 17(1) of the Act. Coming to the reference in hand, the Labour-cum-Conciliation Officer, Shimla zone while exercising the powers vested in him vide notification dated 18.10.2016 has referred the dispute under Section 17(2) to this Court. Now, if the above notification is perused, the same reads as under:

"**In exercise of powers conferred as sub-section (1) of Section 17 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Act, 1955 (45 of 1955), the Governor of 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."

There is nothing on record to remotely suggest that the powers were also conferred upon the Labour-cum-Conciliation Officer, Shimla vide any notification issued by the Government to refer the matter to this Court even under Section 17(2) of the Act.

35. Now, the question which has been raised before this Court is as to whether the Labour-cum-Conciliation Officer, Shimla was competent to refer the matter to this Court in view of notification dated 18.10.2016, as referred to supra under Section 17(2) of the Act. In this regard, it would be beneficial to refer to the judgment of Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in WP No. 6402 of 2019 dated 17.11.2022 case titled as **All India Reporter Private Limited, a Company incorporated and registered under the Companies Act having its registered office at Medows House, Nagindas Master Road, Fort, Mumbai-400023 and its industrial establishment at Congress Nagar, Nagpur, through its Managing Director-Shri Sumant Widyadhar Chitaley (Original Party No.1). *Vs.* The State of Maharashtra, through the Secretary, Department of Industries, Energy and Labour, Mantralaya, Mumbai and anr.** The relevant portion of the judgment is reproduced as under:

"6] **In the light of the rival submissions, the question that deserves consideration is whether it is open for the State Government to delegate its power of referring a question arising under the Act of 1955 to any authority or whether such power has to be exercised by the State Government itself. To consider the said question, it would be necessary to refer to the provisions of Sections 17(1) and (2) of the Act of 1955, which read thus :**

"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 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."

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. ……..

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".

36. This judgment was followed by the Hon'ble High Court of Bombay, Aurangabad Bench in case titled as **Head of Human Resources, Dainik Bhaskar Group Vs. Dinesh Devidas Pardeshi 2023 (177) FLR 218**.

37. Thus, it is amply clear from the above judgments that powers under Section 17(2) of the Act cannot be delegated to the Labour-cum-Conciliation Officer, Shimla to make a reference under Section 17(2) of the Act nor any such notification has been produced or brought to the notice of this Court that the Labour-cum-Conciliation Officer, Shimla was authorized to make a reference to this Court even under Section 17(2) of the Act.

38. In view of the discussion made hereinabove, and in view of the ratio of judgment of Hon'ble High Court of Bombay at Nagpur bench, followed by the Hon'ble High Court of Bombay at Aurangabad Bench (supra), that the Government cannot delegate its powers under Section 17 (2) of the Act to any Labour Officer to file a reference in this regard before this Court. The reference,

thus, which has been made to this Court is without any jurisdiction and the same is not maintainable. Hence, issue no.3 is decided against the petitioner**.**

Relief

39. In view of my findings on issues no.1 to 3, above, the claim filed by the petitioner fails and hereby dismissed. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the Appropriate Government as well as to the Labour Officer, Shimla zone for further action. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 3rd Day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No : 118 of 2016

Instituted on : 23.11.2016

Decided on : 03.10.2024

Kuldeep Sharma s/o Shri Hari Krishan Sharma, r/o Village Rihar, P.O. Salana, Via Shoghi, Tehsil & District Shimla, H.P. 171219 . . *Petitioner.*

Versus

M/s Dainik Bhaskar, Malbrow, House Near DPRO Office, Chhota Shimla, Shimla-2, H.P. . . *Respondent.*

Reference under Section 17(2) of the Working Journalists and other Newspaper Employees (Conditions of Services and Miscellaneous Provisions) Act, 1955.

For the petitioner : Sh. Pavinder Kumar, Advocate

For the respondent : Sh. Surinder Saklani, Advocate

AWARD

The Labour-*cum*-Conciliation Officer, Shimla Zone Shimla has made the following reference to this Court after failure of the conciliation proceedings:

"**Whether the action of the employers M/S Dainik Bhaskar, D.B. Corporation Ltd. Regional Office, Plot No. 11-12, Sector-25D, Chandigarh and M/S Dainik Bhaskar,**

Malbrow House Near DPRO Office, Chhota Shimla, Shimla-2, H.P. for not paying claim of arrears amounting to Rs. 4,94,707/- (Rs. Four lakh ninety four thousand seven hundred seven only) to Shri Kuldeep Sharma, S/o Shri Hari Krishan Sharma, r/o Village Riharm, P.O. Salana, *Via* Shoghi, District & Tehsil Shimla, H.P. 17121, as difference of wages actually drawn and due as per recommendation of Majithia Wage Boards (Copy of claim enclosed) constituted under Section 9 & 13(C) of the Working Journalists and Other Newspaper Employees (Condition of Services and Miscellaneous Provisions Act, 1955) is legal and justified? If yes, to what amount of relief/arrear, along-with interest etc., the aggrieved employee is entitled to from the above employers/ management?"

2. The case as emerges from the statement of claim is that petitioner was engaged as reporter by the respondent on 15.01.2011 and he worked up till 31.01.2014. Petitioner was enrolled with the respondent publication. Petitioner served the respondent management, without any complaint and nothing adverse has been conveyed to him. At the time of his initial engagement, the petitioner was paid salary which was not in consonance with the recommendations of Majithia Wage Board. Petitioner along-with others demanded their salary as per the recommendations of Majithia Wage Board notification dated 11.11.2011. This notification though was challenged by the management along-with other newspapers, but the Hon'ble Supreme Court upheld the recommendations of Majithia Wage Board and directed the newspapers/publications to implement the recommendations of Majithia Wage Board *w.e.f.* 11.11.2011, when the Government of India notified the recommendations of Majithia Wage Board. The Hon'ble Supreme Court had ordered to pay all the arrears upto March, 2014 to the eligible persons in four equal installments within a period of one year, however, the management/publication did not implement the directions issued by the Hon'ble Supreme Court. Several contempt petitions were also filed before the Hon'ble Supreme court for non-implementation of the judgment passed by the Hon'ble Supreme Court. Petitioner filed the claim before the Labour Commissioner in view of the recommendations of Majithia Wage Board and claimed for the arrears strictly in view of the recommendations of Majithia Wage Board *w.e.f.* 11.11.2011. The total claim as raised by the petitioner is of ₹ 4,94,707/- along-with 23% interest payable *w.e.f.* 11.11.2011 till its realization. When conciliation proceedings failed, Labour-cum-Conciliation Officer referred the dispute to this Court for adjudication through present reference.

3. Notice of this claim was sent to the respondent in pursuance thereof the respondent contested the claim by filing reply. Apart from taking preliminary objections of maintainability, reference as made by the appropriate Government is devoid of jurisdiction, petitioner has not approached the Court with clean hands and it was claimed that the petitioner was working in administrative or managerial post as such the petitioner does not fall under the purview of either working journalist or non-working journalist. On merits, though the respondent did not dispute that the petitioner was engaged with the DB Corporation Ltd., EDT Digital Media but it was claimed that none of his services as rendered by him is utilized for the newspaper printing within the stipulated period. It was claimed that each and every employee working in the newspaper industry is not eligible and entitled to get benefits under the recommendations of Majithia Wage Board. Petitioner does not fall under the purview of recommendations. It was denied that the petitioner is entitled for the claim of Rs. 4,94,707/- along-with interest @ 23% payable *w.e.f.* 11.11.2011 till its realization and prayed for the dismissal of the claim.

4. Petitioner filed rejoinder in which he denied preliminary objections raised by the respondent and also denied the averments as made in the reply and reaffirmed those as made in the statement of claim.

5. On the pleadings, this Court formulated the following issues on 16.01.2018.

1. Whether the action of the employers/ respondents for not paying claim of arrears amounting to Rs. 4,94,707/- to petitioner as difference of wages actually drawn and due as per recommendation of Majithia Wage Board constituted under Section 9 & 13 of the Working Journalists and other Newspapers Employees (Condition of services and Miscellaneous Provisions Act, 1955) is illegal and unjustified, as alleged? . . *OPP*.

2. If issue no. 1 is proved in affirmative, to what amount of relief/ arrear, along-with interest etc., the petitioner is entitled? . . *OPP*.

3. Whether the claim filed by the petitioner is misconceived, as alleged? . . *OPR*.

4. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. Petitioner appeared in the witness box as PW-1, whereas respondent examined S/Shri Bharamanand Devrani, Dy. News editor as RW-1 and Arvind Pathania, Reporter as RW-2. Shri Bharama Nand (RW-1) again appeared into the witness box as RW-3, Shri Aditya Dube as RW-4 and Shri Joginder Singh as RW-5.

7. I have heard the Ld. Counsel Shri Aman Gupta, Advocate vice counsel Shri Pushpender, Advocate for the petitioner and Shri Surender Saklani, Advocate for the respondent and gone through the records of the case carefully.

8. 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 : Not entitled to any relief.

Issue No. 3 : No.

Relief : Reference is answered in Negative as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

9. Both these issues are intermingled and inter-connected and require common appreciation of the evidence, as such both these issues are taken up together for the purpose of determination.

10. Onus to prove issues no.1 & 2 is on the petitioner.

11. The claim of the petitioner is based upon the fact that Central Government constituted Majithia Wage Board for revision of wages of newspaper establishments and the Majithia Wage Board recommended revision in wages on 01.07.2010. The said recommendations were accepted by the Central Government vide notification dated 11.11.2011. The recommendations of the Majithia Wage Board were notified by the Government, which were challenged by the various newspaper agencies before the Hon'ble Apex Court, however, the Hon'ble Apex Court has upheld the recommendations of the Majithia Board.

12. Before proceeding further, it would be appropriate to first discuss the evidence which is on record.

13. To prove his case, the petitioner stepped into the witness box as PW-1 and led his evidence by way of affidavit PW-1/A, which is just a reproduction of the averments as made in the petition. He also placed on record the cuttings of newspapers Mark PA to Mark PD.

14. During cross-examination, he stated that he has not brought his appointment letter. He denied that he was working in the digital media of the respondent. He deposed that Majithia Wage Board recommendations came into effect in the year 2011 and he was working with the respondent since Jan., 2011. He admitted that he was being paid salary by the respondent but self-stated that the same was not being paid in terms of the Majitha Wage Board recommendations. He deposed that he is not aware about the recommendations of Majithia Wage Board recommendations with respect to the loss making unit. He further deposed that he left the job with the respondent and now days he is working with Punjab Kesri. He denied that he had given a declaration/undertaking under clause 20(j) on the current salary with his free consent. He denied that he does not fall under the Majithia Wage Board recommendations.

15. This is the entire evidence which has been led by the petitioner.

16. In order to rebut the case of the petitioner, respondent examined Shri Bharamanand Devrani, Dy. News Editor of respondent as RW-1. He deposed that he is working in the Dainik Bhaskar since July, 2010 and presently he is the Deputy News Editor of the paper in Shimla. He further deposed that he knows the petitioner who was working in the digital media and print media. He deposed that the petitioner used to work as a reporter and he also use to do the work of sub-editing. He further deposed that the petitioner used to manage the staff under him and even sanctioned their leave.

17. During cross-examination, he deposed that he does not know when Dainik Bhaskar started operations in Shimla. He denied that when the petitioner was working with the respondents, digital media was not in operational there.

18. The other witness examined by the respondent is Shri Arvind Pathania, Reporter of respondent, who appeared into the witness box as RW-2. His statement is also to the effect that the petitioner used to work in digital media as he was working in the digital media.

19. During cross-examination, he deposed that he is working in the digital media from the beginning and he only report for the website portal. He does not remember how many people were working in digital media in 2012 and these days 7 people working in digital media.

20. Shri Bharamanand (RW-1) was again examined as RW-3, who tendered in evidence affidavit Ex. RW-3/A vide which he deposed that he is working with Dainik Bhaskar since 2010 and at present working as Deputy News Editor. He has made the similar statement as was made by him as RW-1.

21. However, during cross-examination, as RW-3, he has deposed that the petitioner is working as reporter since 2001-02 but then self-stated that he is not confirmed of the fact. He deposed that the petitioner worked with the respondent for 7-8 years. This witness has showed ignorance that the petitioner had left his job voluntarily or he was removed by issuing notice.

22. Respondent also examined Shri Aditya Dube as RW-4, who led his evidence by way of affidavit Ex. RW-4/A vide which he deposed that he is working with the Dainik Bhaskar since

October 2017 and at present working as Senior Manager, HR and Admin (CPH2). He further deposed that in view of clause 20 (j) of Majithia Wage Board Recommendations, who has signed the option, will get the salary as per the option and all the employees working at Shimla had given their signatures on option letter as per their will. He further deposed that as per the Majithia Wage Board Recommendations, only the business of newspaper establishment i.e circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. He also deposed that the petitioner ceased to fall within the definition of workman as he was performing the supervisory duties and he was working independently. Petitioner fall within the exception of Section 2 (f) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act, 1955 (hereinafter to be referred as the Act) as he was discharging supervisory/managerial duties. He also placed on record copy of declaration dated 15.11.2011 as Ex. RW-5/B.

23. During cross-examination, he deposed that he has not brought the record pertaining to the appointment, salary perks etc. of the petitioner. He admitted that the petitioner had worked as reporter with the respondent management. He is not aware that the recommendations of Majithia Wage Board are applicable to the reporters. He denied that all the dues and remuneration were not paid to the petitioner in this case as per the recommendation of Majithia Wage Board.

24. Shri Joginder Singh appeared in the witness box as PW-5 and led his evidence by way of affidavit Ex. RW-5/A wherein he has deposed that he is working with the Dainik Bhaskar since 2012 and at present he is working as Senior Reporter. He further deposed that the petitioner was their incharge and the petitioner used to assign the work to them. When he joined the petitioner was working in the digital media and they used to seek leave from the petitioner.

25. During cross-examination, he deposed that the petitioner remained posted as Reporter. He admitted that the record pertaining to appointment, salary etc. is to be maintained in the office which he has not brought in the Court. He admitted that recommendations of Majithai Wage Board are applicable to reporters.

26. So far as the claim of the petitioner is concerned though the claim of the petitioner is based on the recommendations of Majithia Wage Board and on notification dated 11.11.2011 but while leading evidence as well as by submitting the statement of claim the petitioner has not made it clear or established on record that in which group of employee he falls nor there is any evidence to establish what kind of work was assigned to him to fix him in any of the group(s) of employee(s) as per the recommendations of Majithia Wage Board. Apart from that the petitioner has also not classified the class of newspaper establishment with which he was working. Though, the respondent has taken the plea that the petitioner does not fall within the definition of workman under the Act and he fall under the exception of Section 2 (f) of the Act. Even, it is presumed that the petitioner did fall under the definition of working journalist then also the petitioner has not made a single averment as to which category the unit in which he was working, did fall and in which category he falls as per the recommendations of the Majithai Wage Board. In the absence of any such pleadings and proof thereof, it is difficult for his Court to fix the petitioner in any of the categories.

27. As per the case of the petitioner, he worked with the respondent w.e.f. 15.01.2011 to 31.01.2014. At the time when the petitioner had moved application before the Labour Officer, there was no relationship of employer and employee between the parties.

28. Since, the petitioner has admitted that he left the services of the respondent, much before raising this claim and after the cessation of employment, the petitioner who was not in relationship of master and servant with the respondent cannot agitate that he was entitled to enhanced salary as per recommendations of Majithia Wage Board.

29. The other point which was raised in this reference by the respondent is that the provisions of Section 17(2) of the Act are similar to the provisions of Section 33-C(2) of the Industrial Disputes Act. The powers uner section 33-C(2) of the I.D Act confined on the Labour Court are that of executing Court as such the petitioner could not raise any dispute under Section 17(2) of the Act which was not pre-adjudicated or predetermined. The petitioner has raised the claim for difference in pay as per the recommendations of Majithia Wage Board. The reference has been made to this Court under Section 17(2) of the Act. Section 17of the Act reads 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 authorized by him in writing in this behalf or in 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 die, it shall issue a certificate for that amount to the Collector, and the Collector or 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 question so referred were a matter referred to the Labour Court for the adjudication under that Act or law.

(3) …….

30. The Hon'ble High Court of Judicature of Madras in **WP No. 6343 of 2022 dated 15.04.2022 case titled as S. Madhavan *Vs.* M/s THG Publishing Pvt. Ltd. (formerly M/s Kasturi & Sons Ltd.) 859 and 860 Anna Salai Chennai-6000002** has dealt with the similar matter. The Hon'ble high Court of Madras has considered the scope of Section 17(2) of the Act and held as under:

"10. **It is not disputed that the claim of the petitioner for difference in Dearness Allowance for the period 11.11.2011 is based on the Award of the Majithia Wage Board, which was approved by the Government of India on 11.11.2011 and confirmed by the Hon'ble Supreme Court in W.P.(Civil) No. 246 of 2011 on 07.02.2014. The petitioner's raised a dispute claiming difference in Dearness allowance and the same was referred to the Labour Court by the Government of Tamil Nadu in G.O.(ID) 441 dated 21.07.2016 under Section 17 (2) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act, 1955. During the pendency of the said reference in the present 205/2011 the petitioner's were retrenched and hence the complaint under Section 33(1) (a) of the I.D. Act was filed. Let me now refer to the provisions of the Working Journalist Act as well as the ID Act which are relevant for the purpose of this case. Section 2(K) of the ID Act reads as follows:**

"2(k)"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and

workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; "

Section 17(2) of the Working Journalist Act which reads as follows:

"17(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."

11. The reading of Section 17(2), particularly the phrase "as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law", in my view cannot convert the question into a dispute as defined and understood under Section 2(K) of the I.D. Act. The words, as if the question so referred were a matter referred to the Labour Court for adjudication under the act or law" would only mean that while answering the question the Labour Court would adjudicate it in the same manner as it would adjudicate a reference under the I.D. Act. To say that the reference of the question to the Labour Court changes the character of the reference into an industrial dispute goes against the letter and spirit of the said provision. The legislature has used the term "refer the question". The legislature has consciously avoided the term 'dispute', because the legislature was aware that the term 'dispute' has its own connotations under the I.D Act. From a reading of the definition of Industrial Dispute under Section 2(k), it is clear that the question that is referred under Section 17(2) cannot be construed as an industrial dispute. An industrial dispute referred to therein is in relation to non employment, the terms of employment or conditions of labour. Whereas the question under Section 17(2) relates to computation of claim and hence, it would not fall under the definition of industrial dispute under the ID Act.

12. As rightly contended by the learned counsel for the respondent Section 17 of the Working Journalist Act is akin to Section 33(C) (2) of the I.D Act. It is well settled by catena of Judgments of this Court as well as Hon'ble Supreme Court that the jurisdiction exercised by the Labour Court under Section 33(C) (2) is that of an Executing Court. In the present case, it is seen that the recommendations of the Majithia Wage Board were accepted by the Government of India on 11.11.2011 and the same was challenged before the Hon'ble Supreme Court, which confirmed the recommendations of the Majithia Wage Board, but with modification that the same would be effective from 11.11.2011 only.

13. It is the respondents' case that the respondent had paid the dues to the petitioner and other employees as per the order of the Hon'ble Supreme Court in 2014-2015 itself, but the petitioner claimed higher Dearness Allowance and therefore petitioned the Government under the Working Journalist Act. The Government in terms of Section 17 of the Working Journalist Act referred the claim petition to the Principal Labour Court. The aforesaid facts clearly establish that the question referred to was a claim relating to the computation of difference in the Dearness Allowance paid by the respondent to the petitioner. In my view, the question

referred to the Labour Court on the basis of the Majithia Wage Board recommendations relates to computation of Dearness Allowance under Section 17(2) of the Working Journalist Act and hence not an industrial dispute as defined in the Industrial Disputes Act. I am fortified in my view by the Judgment of the Hon'ble Division Bench of the Gujarat High Court in Keshavlal M.Rao Vs. State of Gujarat and Others reported in 1993 (1) LLN 373. The Hon'ble Chief Justice, S.Nainar Sundaram, J. while considering similar issue held as follows:

"Section 17 to a very great extent by verbalism and by implications stands in pari materia with Section 33C of the Industrial Disputes Act, 1947. Section 33C(1) of the Industrial Disputes Act, 1947 is comparable with Section 17(1) of the Act; and Section 33C(2) of the Industrial Disputes Act, 1947 is comparable with Section 17(2) of the Act. The scope of Section 33C of the Industrial Disputes Act, 1947 has come up for consideration by pronouncements not only at the level of the High Courts but also at the level of the Apex Court of the land. They are incisive and they have, without any ambiguity characterized the machinery under Section 33C(2) of the Industrial Disputes Act, 1947 as one relatable to execution stage and not at the adjudicatory level over the right to relief claimed by applicant and denied by the opponent. They have held that investigation into and determination of any dispute regarding the applicant's right to relief and the corresponding liability of the opponent will be outside the scope of the said provision. The set of expression found in Section 33C(2) of the Industrial Disputes Act, 1947 is "If any question arises as to the amount of money due", from the employer to the workman. As already noted, the set of expressions used in Section 17(2) of the Act is "If any question arises as to the amount due under this Act to a newspaper employee from his employer". Under Section 33C(2) of the Industrial Disputes Act, 1947, the specified Labour Court decides that question. Under Section 17(2) of the Act, the question gets referred to the Labour Court for its decision over it. The similar features between the two provisions are very portent and on the basic factor that the provisions are in pari materia, there is every warrant for applying the ratio of the judicial pronouncements delineating the scope of Section 33C(2) of the Industrial Disputes Act, 1947 to delineate the scope of Section 17(2) of the Act."

31. Since, it has been held by the Hon'ble High Court of Madras that the provisions of Section 17(2) of the Act are akin to the provisions of Section 33-C(2) of the Act and such proceedings under Section 33-C(2) are summery in nature. Thus, the pronouncement delineating the scope of Section 33-C (2) of the Industrial Disputes Act, 1947 would also be helpful for disposal of this case. The Hon'ble Apex Court in case titled as **Municipal Corporation of Delhi *Vs.* Razak (1995 SCC 1- 235)** has held as under:

"**Dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by tile employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution**".

32. Similar is the judgment(s) of Hon'ble Supreme Court reported in **2006 (109) FLR 530 case titled as Union of India and another *Vs.* Kankuben (dead) by LRs. and others** and **Bombay Chemical Industries *Vs.* Deputy Labour Commissioner and Anr., 2022 Live Law (SC) 130**.

33. In view of the discussion made hereinabove, it is amply clear that the jurisdiction of Labour Court under Section 17(2) of the Act is limited to the computation of amount due and it cannot decide the dispute as to the entitlement of the petitioner to be fixed in a particular group or to determine that for what salary he is entitled to under the recommendations of Majithia Wage Board. In **Navbharat Press Employees union, Mafatlal Employees Union *Vs.* State of Maharashtra, Labour Industries and Energy Department and Ors., 2009 (III) Bom LR 4347**, the double bench of Hon'ble High Court of Bombay has held that the question as to which class the petitioner falls involves detailed investigation as regard gross revenue of respondent establishment, therefore, the same cannot be termed as mere implementation or execution of the Manisana Award. The relevant para of the aforesaid judgment is as under:

> "15. **The dispute in this case is as regards entitlement of the members of the petitioner union to higher watges on the basis that respondent 5 falls in class II and not in class IV of clause 6 of the Manisana Award and, therefore, the basic question which has to be decided is as to in which class respondent 5 falls. That would involve a detailed investigation as regards gross revenue of respondent 5. For that purpose, various documents including the balance sheet of respondent 5 will have to be gone into. Therefore, this is not a mere implementation or execution of the said Manisana Award**."

34. The Hon'ble Apex Court in case titled as **Kasturi and Sons PrivateLtd., *Vs.* N. Salivateswaran and another AIR 1958 507**, has held that the enquiry contemplated under Section 17 of the Act is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree and award. The relevant paras of the aforesaid judgment are reproduced as under:

> "8. **It is significant that the State Government or the specific authority mentioned in s. 17 has not been clothed with the normal powers of a court or a tribunal to hold a formal enquiry. It is true that s. 3, sub-s. (1) of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to sub-s. (2); but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act. This section cannot be read as conferring on the State Government or the specified authority mentioned under s. 17 power to enforce attendance of witnesses, examine them on oath, issue commission or pass orders in respect of discovery and inspection such as can be passed by the boards, courts or tribunals under the Industrial Disputes Act. It is obvious that the relevant provisions of s. 11 of the Industrial Disputes Act, 1947, which confer the said powers on the conciliation officers, boards, courts and tribunals cannot be made applicable to the State Government or the specified authority mentioned, under s. 17 merely by virtue of s. 3(1) of the act.**
>
> **9. In this connection, it would be relevant to remember that s. 11 of the act expressly confers the material powers on the Wage Board established tinder s. 8 of the Act. Whatever may be the true nature or character of the Wage Board-whether it is a legislative or an administrative body-the legislature has taken the precaution to enact the enabling provisions of s. 11 in the matter of the said material powers. It**

is well known that, whenever the legislature wants to confer upon any specified authority powers of a civil court in the matter of holding enquiries, specific provision is made in that behalf. if the legislature had intended that the enquiry authorized under s. 17 should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, the legislature would undoubtedly have made an appropriate provision conferring on the State Government or the specified authority the relevant powers essential for the purpose of effectively holding such an enquiry. The fact that the legislature has enacted s. 11 in regard to the Wage Board but has not made any corresponding provision in regard to the State Government or the specified authority under s. 17 lends strong corroboration to the view that the enquiry contemplated by s. 17 is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employee after establishing his claim in that behalf. We are reluctant to accept the view that the legislature intended that the specified authority or the State Government should hold a larger enquiry into the merits of the employee's claim without conferring on the State Government or the specified authority the necessary powers in that behalf. In this connection, it would be relevant to Point out that in many cases some complicated questions of fact may arise when working journalists make claims for wages against their employers. It is not unlikely that the status of the working journalist, the nature of the office he holds and the class to which he belongs may themselves be matters of dispute between the parties and the decision of such disputed questions of fact may need thorough examination and a formal enquiry. If that be so it is not likely that the legislature could have intended that such complicated questions of fact should be dealt with in a summary enquiry indicated by s. 17."

35. Though, reliance was placed by Ld. Counsel for the respondent on **AIR 1966-182 as well as on writ case no. 33532 of 2023**, but the facts of this authority are distinguishable from the facts of this case. Keeping in view my aforesaid discussion, both these issues are answered in negative and against the petitioner.

Issue No.3

36. So far as issue No.3 is concerned, it is evident that an application was moved by the applicant before the designated authority under the Act for issuance of recovery certificate in compliance of the order(s) dated 28.4.2015, 12.1.2016 and 23.8.2016 passed by the Hon'ble Apex Court in **CCP No. 128 of 2015 and 129 of 2015 and WP (C) No. 246 of 2011 dated 7.2.2014** and claimed for the dues since the issuance of notification by the Central Government on the recommendations of Majithia Wage Board. The applicant had also submitted Form C as per Rule 36 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957. It is evident from the record that the application was primarily made by the petitioner before the designated authority under the Working Journalists (conditions of Service) and Miscellaneous Provisions Act, 1955 for issuance of recovery certificate under section 17(1) of the Act. The petitioner had made a request that the directions issued by the Hon'ble Supreme Court vide order dated 23.8.2016 be complied with and in para no. 2 of the application the applicant had made it clear that that the application has been moved under section 17(1) of the Act and in the last of the para no. 3, it was mentioned by the applicant that since the employee has not preferred the application under Section 17(2), the same cannot be referred for adjudication under the misguided pressure of the management as the same would attract contempt of Court against the Labour Commissioner. Thus, it is amply clear that the application was preferred by the petitioner under

section 17(1) of the Act. Coming to the reference in hand, the Labour-cum-Conciliation Officer, Shimla zone while exercising the powers vested in him vide notification dated 18.10.2016 has referred the dispute under Section 17(2) to this Court. Now, if the above notification is perused, the same reads as under:

> "**In exercise of powers conferred as sub-section (1) of Section 17 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Act, 1955 (45 of 1955), the Governor of 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**."

There is nothing on record to remotely suggest that the powers were also conferred upon the Labour-cum-Conciliation Officer, Shimla vide any notification issued by the Government to refer the matter to this Court even under Section 17(2) of the Act.

37. Now, the question which has been raised before this Court is as to whether the Labour-cum-Conciliation Officer, Shimla was competent to refer the matter to this Court in view of notification dated 18.10.2016, as referred to supra under Section 17(2) of the Act. In this regard, it would be beneficial to refer to the judgment of Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in WP No. 6402 of 2019 dated 17.11.2022 case titled as **All India Reporter Private Limited, a Company incorporated and registered under the Companies Act having its registered office at Medows House, Nagindas Master Road, Fort, Mumbai – 400023 and its industrial establishment at Congress Nagar, Nagpur, through its Managing Director – Shri Sumant Widyadhar Chitaley (Original Party No.1). Vs. The State of Maharashtra, through the Secretary, Department of Industries, Energy and Labour, Mantralaya, Mumbai and anr.** The relevant portion of the judgment is reproduced as under:

> "6] **In the light of the rival submissions, the question that deserves consideration is whether it is open for the State Government to delegate its power of referring a question arising under the Act of 1955 to any authority or whether such power has to be exercised by the State Government itself. To consider the said question, it would be necessary to refer to the provisions of Sections 17(1) and (2) of the Act of 1955, which read thus :**
>
> **"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 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."**

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. ……..

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".

38. This judgment was followed by the Hon'ble High Court of Bombay, Aurangabad Bench in case titled as **Head of Human Resources, Dainik Bhaskar Group Vs. Dinesh Devidas Pardeshi 2023 (177) FLR 218**.

39. Thus, it is amply clear from the above judgments that powers under Section 17(2) of the Act cannot be delegated to the Labour-cum-Conciliation Officer, Shimla to make a reference under Section 17(2) of the Act nor any such notification has been produced or brought to the notice

of this Court that the Labour-cum-Conciliation Officer, Shimla was authorized to make a reference to this Court even under Section 17(2) of the Act.

40. In view of the discussion made hereinabove, and in view of the ratio of judgment of Hon'ble High Court of Bombay at Nagpur bench, followed by the Hon'ble High Court of Bombay at Aurangabad Bench (supra), that the Government cannot delegate its powers under Section 17 (2) of the Act to any Labour Officer to file a reference in this regard before this Court. The reference, thus, which has been made to this Court is without any jurisdiction and the same is not maintainable. Hence, issue no.3 is decided against the petitioner**.**

Relief

41. In view of my findings on issues no.1 to 3, above, the claim filed by the petitioner fails and hereby dismissed. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the Appropriate Government as well as to the Labour Officer, Shimla zone for further action. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 3rd Day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No : 119 of 2016

Instituted on : 23.11.2016

Decided on : 03.10.2024

Ashok Kumar Chauhan, s/o Sh. Prakash Chand, r/o Flat No. 404, Block-22, Sector- 3, New Shimla, H.P. . . *Petitioner*.

Versus

M/s Dainik Bhaskar, Malbrow, House Near DPRO Office, Chhota Shimla, Shimla-2, H.P. . . *Respondent*.

Reference under Section 17(2) of the Working Journalists and other Newspaper Employees (Conditions of Services and Miscellaneous Provisions) Act, 1955.

For the petitioner : Sh. Pavinder Kumar, Advocate

For the respondent : Sh. Surinder Saklani, Advocate

AWARD

The Labour-cum-Conciliation Officer, Shimla Zone Shimla has made the following reference to this Court after failure of the conciliation proceedings:

> "**Whether the action of the employers M/s Dainik Bhaskar, D.B. Corporation Ltd. Regional Office, Plot No. 11-12, Sector-25D, Chandigarh and M/s Dainik Bhaskar, Malbrow House Near DPRO Office, Chhota Shimla, Shimla-2, H.P. for not paying claim of arrears amounting to Rs. 6,10,015/- (Rs. Six lakh ten thousand fifteen only) to Shri Ashok Kumar Chauhan, S/o Shri Prakash Chand, R/o Flat No. 404, Block-22, Sector-3 New Shimla, H.P. as difference of wages actually drawn and due as per recommendation of Majithia Wage Boards (Copy of claim enclosed) constituted under Section 9 & 13(C) of the Working Journalists and Other Newspaper Employees (Condition of Services and Miscellaneous Provisions Act, 1955) is legal and justified? If yes, to what amount of relief/arrear, along-with interest etc., the aggrieved employee is entitled to from the above employers/ management?"**

2. The case as emerges from the statement of claim is that petitioner was engaged as reporter by the respondent on 01.04.2010 and he worked up till Feb., 2014. Petitioner was enrolled with the respondent publication. Petitioner served the respondent management, without any complaint and nothing adverse has been conveyed to him. At the time of his initial engagement, the petitioner was paid salary which was not in consonance with the recommendations of Majithia Wage Board. Petitioner along-with others demanded their salary as per the recommendations of Majithia Wage Board notification dated 11.11.2011. This notification though was challenged by the management along-with other newspapers, but the Hon'ble Supreme Court upheld the recommendations of Majithia Wage Board and directed the newspapers/publications to implement the recommendations of Majithia Wage Board *w.e.f.* 11.11.2011, when the Government of India notified the recommendations of Majithia Wage Board. The Hon'ble Supreme Court had ordered to pay all the arrears upto March, 2014 to the eligible persons in four equal installments within a period of one year, however, the management/publication did not implement the directions issued by the Hon'ble Supreme Court. Several contempt petitions were also filed before the Hon'ble Supreme court for non-implementation of the judgment passed by the Hon'ble Supreme Court. Petitioner filed the claim before the Labour Commissioner in view of the recommendations of Majithia Wage Board and claimed for the arrears strictly in view of the recommendations of Majithia Wage Board *w.e.f.* 11.11.2011. The total claim as raised by the petitioner is of ₹ 6,10,015/- along-with 23% interest payable *w.e.f.* 11.11.2011 till its realization. When conciliation proceedings failed, Labour-cum-Conciliation Officer referred the dispute to this Court for adjudication through present reference.

3. Notice of this claim was sent to the respondent in pursuance thereof the respondent contested the claim by filing reply. Apart from taking preliminary objections of maintainability, reference as made by the appropriate Government is devoid of jurisdiction, petitioner has not approached the Court with clean hands and it was claimed that the petitioner was working in administrative or managerial post as such the petitioner does not fall under the purview of either working journalist or non-working journalist. On merits, though the respondent did not dispute that the petitioner was engaged with the DB Corporation Ltd., EDT Digital Media but it was claimed that none of his services as rendered by him is utilized for the newspaper printing within the stipulated period. It was claimed that each and every employee working in the newspaper industry is not eligible and entitled to get benefits under the recommendations of Majithia Wage Board. Petitioner does not fall under the purview of recommendations. It was denied that the petitioner is entitled for the claim of Rs. 6,10,015/- along-with interest @ 23% payable *w.e.f.* 11.11.2011 till its realization and prayed for the dismissal of the claim.

4. Petitioner filed rejoinder in which he denied preliminary objections raised by the respondent and also denied the averments as made in the reply and reaffirmed those as made in the statement of claim.

5. On the pleadings, this Court formulated the following issues on 16.01.2018.

1. Whether the action of the employers/ respondents for not paying claim of arrears amounting to Rs. 6,10,015/- to petitioner as difference of wages actually drawn and due as per recommendation of Majithia Wage Board constituted under Section 9 & 13 of the Working Journalists and other Newspapers Employees (Condition of services and Miscellaneous Provisions Act, 1955) is illegal and unjustified, as alleged? . . *OPP*.

2. If issue no. 1 is proved in affirmative, to what amount of relief/ arrear, along-with interest etc., the petitioner is entitled? . . *OPP*.

3. Whether the claim filed by the petitioner is misconceived, as alleged? . .*OPR*.

4. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. Petitioner appeared in the witness box as PW-1, whereas respondent examined S/Shri Bharamanand Devrani, Dy. News editor as RW-1 and Satnam Gill, Photographer as RW-2. Shri Bharama Nand (RW-1) again appeared into the witness box as RW-3 and Shri Aditya Dubey as RW-4.

7. I have heard the Ld. Counsel Shri Aman Gupta, Advocate vice counsel Shri Pushpender, Advocate for the petitioner and Shri Surender Saklani, Advocate for the respondent and gone through the records of the case carefully.

8. 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 : Not entitled to any relief

Issue No. 3 : No

Relief : Reference is answered in Negative as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

9. Both these issues are intermingled and inter-connected and require common appreciation of the evidence, as such both these issues are taken up together for the purpose of determination.

10. Onus to prove issues no.1 & 2 is on the petitioner.

11. The claim of the petitioner is based upon the fact that Central Government constituted Majithia Wage Board for revision of wages of newspaper establishments and the Majithia Wage Board recommended revision in wages on 01.07.2010. The said recommendations were accepted by the Central Government vide notification dated 11.11.2011. The recommendations of the Majithia Wage Board were notified by the Government, which were challenged by the various newspaper agencies before the Hon'ble Apex Court, however, the Hon'ble Apex Court has upheld the recommendations of the Majithia Board.

12. Before proceeding further, it would be appropriate to first discuss the evidence which is on record.

13. To prove his case, the petitioner stepped into the witness box as PW-1 and led his evidence by way of affidavit PW-1/A, which is just a reproduction of the averments as made in the petition. He also placed on record the cuttings of newspapers Mark PA to Mark PC.

14. During cross-examination, he stated that he has not brought his appointment letter. He denied that he was working in the digital media of the respondent. He deposed that Majithia Wage Board recommendations came into effect in the year 2011 and he was working with the respondent since the year 2020. He admitted that he was being paid salary by the respondent but self-stated that the same was not being paid in terms of the Majitha Wage Board recommendations. He deposed that he is not aware about the recommendations of Majithia Wage Board recommendations with respect to the loss making unit. He further deposed that he left the job with the respondent and now days he is working as agriculturist. He denied that he does not fall under the Majithia Wage Board recommendations.

15. This is the entire evidence which has been led by the petitioner.

16. In order to rebut the case of the petitioner, respondent examined Shri Bharamanand Devrani, Dy. News Editor of respondent as RW-1. He deposed that he is working in the Dainik Bhaskar since July, 2010 and presently he is the Deputy News Editor of the paper in Shimla. He further deposed that he knows the petitioner who was working in the digital media and print media. He deposed that the petitioner used to work as a reporter and he also use do the work of sub-editing. He further deposed that the petitioner used to manage the staff under him and even sanctioned their leave.

17. During cross-examination, he deposed that he does not know when Dainik Bhaskar started operations in Shimla. He denied that when the petitioner was working with the respondent, digital media was not in operational there.

18. The other witness examined by the respondent is Shri Satnam Gill, Photographer of respondent, who appeared into the witness box as RW-2. His statement is also to the effect that the petitioner was working in the digital media.

19. During cross-examination, he deposed that in the year 2006, he was working under one Shri Tyagi (Editor).

20. Shri Bharamanand (RW-1) was again examined as RW-3, who tendered in evidence affidavit Ex. RW-3/A vide which he deposed that he is working with Dainik Bhaskar since 2010 and at present working as Deputy News Editor. He has made the similar statement as was made by him as RW-1.

21. However, during cross-examination, as RW-3, he has deposed that the petitioner is working as reporter since 2001-02 but then self-stated that he is not confirmed of the fact. He deposed that the petitioner worked with the respondent for 7-8 years.

22. Respondent also examined Shri Aditya Dube as RW-4, who led his evidence by way of affidavit Ex. RW-4/A vide which he deposed that he is working with the dainik bhaskar since October 2017 and at present working as Senior Manager, HR and Admin (CPH2). He further deposed that in view of clause 20 (j) of Majithia Wage Board Recommendations, who has signed the option, will get the salary as per the option and all the employees working at Shimla had given their signatures on option letter as per their will. He further deposed that as per the Majithia Wage Board Recommendations, only the business of newspaper establishment i.e circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. He also deposed that the petitioner ceased to fall within the definition of workman as he was performing the supervisory duties and he was working independently. Petitioner fall within the exception of Section 2 (f) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act 1955 (hereinafter to be referred as the Act) as he was discharging supervisory/managerial duties. He also placed on record copy of declaration dated 15.11.2011 as Ex. RW-4/B.

23. During cross-examination, he deposed that he has not brought the record pertaining to the appointment, salary perks etc. of the petitioner. He admitted that the petitioner had worked as reporter with the respondent management. He is not aware that the recommendations of Majithia Wage Board are applicable to the reporters. He denied that all the dues and remuneration were not paid to the petitioner in this case as per the recommendation of Majithia Wage Board.

24. So far as the claim of the petitioner is concerned though the claim of the petitioner is based on the recommendations of Majithia Wage Board and on notification dated 11.11.2011 but while leading evidence as well as by submitting the statement of claim the petitioner has not made it clear or established on record that in which group of employee he falls nor there is any evidence to establish what kind of work was assigned to him to fix him in any of the group(s) of employee(s) as per the recommendations of Majithia Wage Board. Apart from that the petitioner has also not classified the class of newspaper establishment with which he was working. Though, the respondent has taken the plea that the petitioner does not fall within the definition of workman under the Act and he fall under the exception of Section 2 (f) of the Act. Even, it is presumed that the petitioner did fall under the definition of working journalist then also the petitioner has not made a single averment as to which category the unit in which he was working, did fall and in which category he falls as per the recommendations of the Majithai Wage Board. In the absence of any such pleadings and proof thereof, it is difficult for his Court to fix the petitioner in any of the categories.

25. As per the case of the petitioner, he worked with the respondent w.e.f. 01.04.2010 to Feb., 2014. At the time when the petitioner had moved application before the Labour Officer, there was no relationship of employer and employee between the parties.

26. Since, the petitioner has admitted that he left the services of the respondent, much before raising this claim and after the cessation of employment, the petitioner who was not in relationship of master and servant with the respondent cannot agitate that he was entitled to enhanced salary as per recommendations of Majithia Wage Board.

27. The other point which was raised in this reference by the respondent is that the provisions of Section 17(2) of the Act are similar to the provisions of Section 33-C(2) of the Industrial Disputes Act. The powers uner section 33-C(2) of the I.D Act confined on the Labour Court are that of executing Court as such the petitioner could not raise any dispute under Section 17(2) of the Act which was not pre-adjudicated or predetermined. The petitioner has raised the claim for difference in pay as per the recommendations of Majithia Wage Board. The reference has been made to this Court under Section 17(2) of the Act. Section 17of the Act reads 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 authorized by him in writing in this behalf or in 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 die, it shall issue a certificate for that amount to the Collector, and the Collector or 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 question so referred were a matter referred to the Labour Court for the adjudication under that Act or law.

(3) …….

28. The Hon'ble High Court of Judicature of Madras in **WP No. 6343 of 2022 dated 15.04.2022 case titled as S. Madhavan Vs. M/s THG Publishing Pvt. Ltd. (formerly M/s Kasturi & Sons Ltd.) 859 and 860 Anna Salai Chennai-6000002** has dealt with the similar matter. The Hon'ble high Court of Madras has considered the scope of Section 17(2) of the Act and held as under:

"10. **It is not disputed that the claim of the petitioner for difference in Dearness Allowance for the period 11.11.2011 is based on the Award of the Majithia Wage Board, which was approved by the Government of India on 11.11.2011 and confirmed by the Hon'ble Supreme Court in W.P.(Civil) No. 246 of 2011 on 07.02.2014. The petitioner's raised a dispute claiming difference in Dearness allowance and the same was referred to the Labour Court by the Government of Tamil Nadu in G.O. (ID) 441 dated 21.07.2016 under Section 17 (2) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act 1955. During the pendency of the said reference in the present 205/2011 the petitioner's were retrenched and hence the complaint under Section 33(1) (a) of the I.D. Act was filed. Let me now refer to the provisions of the Working Journalist Act as well as the ID Act which are relevant for the purpose of this case. Section 2(K) of the ID Act reads as follows:**

"2(k)"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; "

Section 17(2) of the Working Journalist Act which reads as follows:

"17(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."

11. The reading of Section 17(2), particularly the phrase "as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law", in my view cannot convert the question into a dispute as defined and understood under Section 2(K) of the I.D. Act. The words, as if the question so referred were a matter referred to the Labour Court for adjudication under the act or law" would only mean that while answering the question the Labour Court would adjudicate it in the same manner as it would adjudicate a reference under the I.D. Act. To say that the reference of the question to the Labour Court changes the character of the reference into an industrial dispute goes against the letter and spirit of the said provision. The legislature has used the term "refer the question". The legislature has consciously avoided the term 'dispute', because the legislature was aware that the term 'dispute' has its own connotations under the I.D Act. From a reading of the definition of Industrial Dispute under Section 2(k), it is clear that the question that is referred under Section 17(2) cannot be construed as an industrial dispute. An industrial dispute referred to therein is in relation to non employment, the terms of employment or conditions of labour. Whereas the question under Section 17(2) relates to computation of claim and hence, it would not fall under the definition of industrial dispute under the ID Act.

12. As rightly contended by the learned counsel for the respondent Section 17 of the Working Journalist Act is akin to Section 33(C)(2) of the I.D Act. It is well settled by catena of Judgments of this Court as well as Hon'ble Supreme Court that the jurisdiction exercised by the Labour Court under Section 33(C)(2) is that of an Executing Court. In the present case, it is seen that the recommendations of the Majithia Wage Board were accepted by the Government of India on 11.11.2011 and the same was challenged before the Hon'ble Supreme Court, which confirmed the recommendations of the Majithia Wage Board, but with modification that the same would be effective from 11.11.2011 only.

13. It is the respondents' case that the respondent had paid the dues to the petitioner and other employees as per the order of the Hon'ble Supreme Court in 2014-2015 itself, but the petitioner claimed higher Dearness Allowance and therefore petitioned the Government under the Working Journalist Act. The Government in terms of Section 17 of the Working Journalist Act referred the claim petition to the Principal Labour Court. The aforesaid facts clearly establish that the question referred to was a claim relating to the computation of difference in the Dearness Allowance paid by the respondent to the petitioner. In my view, the question referred to the Labour Court on the basis of the Majithia Wage Board recommendations relates to computation of Dearness Allowance under Section 17(2) of the Working Journalist Act and hence not an industrial dispute as defined in the Industrial Disputes Act. I am fortified in my view by the Judgment of the Hon'ble Division Bench of the Gujarat High Court in Keshavlal M.Rao Vs. State of Gujarat and Others reported in 1993 (1) LLN 373. The Hon'ble Chief Justice, S. Nainar Sundaram, J. while considering similar issue held as follows:

"Section 17 to a very great extent by verbalism and by implications stands in pari materia with Section 33C of the Industrial Disputes Act, 1947. Section 33C(1) of the Industrial Disputes Act, 1947 is comparable with Section 17(1) of the Act; and Section 33C(2) of the Industrial Disputes Act, 1947 is comparable with Section 17(2) of the Act. The scope of Section 33C of the Industrial Disputes Act, 1947 has come up for consideration by pronouncements not only at the level of the High Courts but also at the level of the Apex Court of the land. They are incisive and they have, without any ambiguity characterized the machinery under Section 33C(2) of the Industrial Disputes Act, 1947 as one relatable to execution stage and not at the adjudicatory level over the right to relief claimed by applicant and denied by the opponent. They have held that investigation into and determination of any dispute regarding the applicant's right to relief and the corresponding liability of the opponent will be outside the scope of the said provision. The set of expression found in Section 33C(2) of the Industrial Disputes Act, 1947 is "If any question arises as to the amount of money due", from the employer to the workman. As already noted, the set of expressions used in Section 17(2) of the Act is "If any question arises as to the amount due under this Act to a newspaper employee from his employer". Under Section 33C(2) of the Industrial Disputes Act, 1947, the specified Labour Court decides that question. Under Section 17(2) of the Act, the question gets referred to the Labour Court for its decision over it. The similar features between the two provisions are very portent and on the basic factor that the provisions are in pari materia, there is every warrant for applying the ratio of the judicial pronouncements delineating the scope of Section 33C(2) of the Industrial Disputes Act, 1947 to delineate the scope of Section 17(2) of the Act."

29. Since, it has been held by the Hon'ble High Court of Madras that the provisions of Section 17(2) of the Act are akin to the provisions of Section 33-C(2) of the Act and such proceedings under Section 33-C(2) are summery in nature. Thus, the pronouncement delineating the scope of Section 33-C (2) of the Industrial Disputes Act, 1947 would also be helpful for disposal of this case. The Hon'ble Apex Court in case titled as **Municipal Corporation of Delhi Vs. Razak (1995 SCC 1- 235)** has held as under:

"**Dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33- C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by tile employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33- C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution**".

30. Similar is the judgment(s) of Hon'ble Supreme Court reported in **2006 (109) FLR 530 case titled as Union of India and another *Vs.* Kankuben (dead) by LRs. and others** and **Bombay Chemical Industries *Vs.* Deputy Labour Commissioner and Anr., 2022 Live Law (SC) 130**.

31. In view of the discussion made hereinabove, it is amply clear that the jurisdiction of Labour Court under Section 17(2) of the Act is limited to the computation of amount due and it cannot decide the dispute as to the entitlement of the petitioner to be fixed in a particular group or

to determine that for what salary he is entitled to under the recommendations of Majithia Wage Board. In **Navbharat Press Employees union, Mafatlal Employees Union Vs. State of Maharashtra, Labour Industries and Energy Department and Ors., 2009 (III) Bom LR 4347**, the double bench of Hon'ble High Court of Bombay has held that the question as to which class the petitioner falls involves detailed investigation as regard gross revenue of respondent establishment, therefore, the same cannot be termed as mere implementation or execution of the Manisana Award. The relevant para of the aforesaid judgment is as under:

"15. **The dispute in this case is as regards entitlement of the members of the petitioner union to higher watges on the basis that respondent 5 falls in class II and not in class IV of clause 6 of the Manisana Award and, therefore, the basic question which has to be decided is as to in which class respondent 5 falls. That would involve a detailed investigation as regards gross revenue of respondent 5. For that purpose, various documents including the balance sheet of respondent 5 will have to be gone into. Therefore, this is not a mere implementation or execution of the said Manisana Award**."

32. The Hon'ble Apex Court in case titled as **Kasturi and Sons PrivateLtd., Vs. N. Salivateswaran and another AIR 1958 507**, has held that the enquiry contemplated under Section 17 of the Act is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree and award. The relevant paras of the aforesaid judgment are reproduced as under:

"8**. It is significant that the State Government or the specific authority mentioned in s. 17 has not been clothed with the normal powers of a court or a tribunal to hold a formal enquiry. It is true that s. 3, sub-s. (1) of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to sub-s. (2); but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act. This section cannot be read as conferring on the State Government or the specified authority mentioned under s. 17 power to enforce attendance of witnesses, examine them on oath, issue commission or pass orders in respect of discovery and inspection such as can be passed by the boards, courts or tribunals under the Industrial Disputes Act. It is obvious that the relevant provisions of s. 11 of the Industrial Disputes Act, 1947, which confer the said powers on the conciliation officers, boards, courts and tribunals cannot be made applicable to the State Government or the specified authority mentioned, under s. 17 merely by virtue of s. 3(1) of the act.**

9. In this connection, it would be relevant to remember that s. 11 of the act expressly confers the material powers on the Wage Board established tinder s. 8 of the Act. Whatever may be the true nature or character of the Wage Board-whether it is a legislative or an administrative body-the legislature has taken the precaution to enact the enabling provisions of s. 11 in the matter of the said material powers. It is well known that, whenever the legislature wants to confer upon any specified authority powers of a civil court in the matter of holding enquiries, specific provision is made in that behalf. if the legislature had intended that the enquiry authorized under s. 17 should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, the legislature would undoubtedly have made an appropriate provision conferring on the State Government or the specified authority the relevant powers essential for the purpose of effectively holding such an enquiry. The fact that the legislature

has enacted s. 11 in regard to the Wage Board but has not made any corresponding provision in regard to the State Government or the specified authority under s. 17 lends strong corroboration to the view that the enquiry contemplated by s. 17 is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employee after establishing his claim in that behalf. We are reluctant to accept the view that the legislature intended that the specified authority or the State Government should hold a larger enquiry into the merits of the employee's claim without conferring on the State Government or the specified authority the necessary powers in that behalf. In this connection, it would be relevant to Point out that in many cases some complicated questions of fact may arise when working journalists make claims for wages against their employers. It is not unlikely that the status of the working journalist, the nature of the office he holds and the class to which he belongs may themselves be matters of dispute between the parties and the decision of such disputed questions of fact may need thorough examination and a formal enquiry. If that be so it is not likely that the legislature could have intended that such complicated questions of fact should be dealt with in a summary enquiry indicated by s. 17."

33. Though, reliance was placed by Ld. Counsel for the respondent on **AIR 1966-182 as well as on writ case no. 33532 of 2023**, but the facts of this authority are distinguishable from the facts of this case. Keeping in view my aforesaid discussion, both these issues are answered in negative and against the petitioner.

Issue No.3

34. So far as issue No. 3 is concerned, it is evident that an application was moved by the applicant before the designated authority under the Act for issuance of recovery certificate in compliance of the order(s) dated 28.4.2015, 12.1.2016 and 23.8.2016 passed by the Hon'ble Apex Court in **CCP No. 128 of 2015 and 129 of 2015 and WP (C) No. 246 of 2011 dated 7.2.2014** and claimed for the dues since the issuance of notification by the Central Government on the recommendations of Majithia Wage Board. The applicant had also submitted Form C as per Rule 36 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957. It is evident from the record that the application was primarily made by the petitioner before the designated authority under the Working Journalists (conditions of Service) and Miscellaneous Provisions Act, 1955 for issuance of recovery certificate under section 17(1) of the Act. The petitioner had made a request that the directions issued by the Hon'ble Supreme Court vide order dated 23.8.2016 be complied with and in para no.2 of the application the applicant had made it clear that that the application has been moved under section 17(1) of the Act and in the last of the para no.3, it was mentioned by the applicant that since the employee has not preferred the application under Section 17(2), the same cannot be referred for adjudication under the misguided pressure of the management as the same would attract contempt of Court against the Labour Commissioner. Thus, it is amply clear that the application was preferred by the petitioner under section 17(1) of the Act. Coming to the reference in hand, the Labour-cum-Conciliation Officer, Shimla zone while exercising the powers vested in him vide notification dated 18.10.2016 has referred the dispute under Section 17(2) to this Court. Now, if the above notification is perused, the same reads as under:

"**In exercise of powers conferred as sub-section (1) of Section 17 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Act, 1955 (45 of 1955), the Governor of 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."

There is nothing on record to remotely suggest that the powers were also conferred upon the Labour-*cum*-Conciliation Officer, Shimla *vide* any notification issued by the Government to refer the matter to this Court even under Section 17(2) of the Act.

35. Now, the question which has been raised before this Court is as to whether the Labour-cum-Conciliation Officer, Shimla was competent to refer the matter to this Court in view of notification dated 18.10.2016, as referred to supra under Section 17(2) of the Act. In this regard, it would be beneficial to refer to the judgment of Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in WP No. 6402 of 2019 dated 17.11.2022 case titled as **All India Reporter Private Limited, a Company incorporated and registered under the Companies Act having its registered office at Medows House, Nagindas Master Road, Fort, Mumbai – 400023 and its industrial establishment at Congress Nagar, Nagpur, through its Managing Director – Shri Sumant Widyadhar Chitaley (Original Party No.1). Vs. The State of Maharashtra, through the Secretary, Department of Industries, Energy and Labour, Mantralaya, Mumbai and anr.** The relevant portion of the judgment is reproduced as under:

"6] **In the light of the rival submissions, the question that deserves consideration is whether it is open for the State Government to delegate its power of referring a question arising under the Act of 1955 to any authority or whether such power has to be exercised by the State Government itself. To consider the said question, it would be necessary to refer to the provisions of Sections 17(1) and (2) of the Act of 1955, which read thus :**

"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 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."

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. ……..

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".

36. This judgment was followed by the Hon'ble High Court of Bombay, Aurangabad Bench in case titled as **Head of Human Resources, Dainik Bhaskar Group Vs. Dinesh Devidas Pardeshi 2023 (177) FLR 218**.

37. Thus, it is amply clear from the above judgments that powers under Section 17(2) of the Act cannot be delegated to the Labour-cum-Conciliation Officer, Shimla to make a reference under Section 17(2) of the Act nor any such notification has been produced or brought to the notice of this Court that the Labour-cum-Conciliation Officer, Shimla was authorized to make a reference to this Court even under Section 17(2) of the Act.

38. In view of the discussion made hereinabove, and in view of the ratio of judgment of Hon'ble High Court of Bombay at Nagpur bench, followed by the Hon'ble High Court of Bombay at Aurangabad Bench (supra), that the Government cannot delegate its powers under Section 17 (2) of the Act to any Labour Officer to file a reference in this regard before this Court. The reference,

thus, which has been made to this Court is without any jurisdiction and the same is not maintainable. Hence, issue no.3 is decided against the petitioner**.**

Relief

39. In view of my findings on issues no.1 to 3, above, the claim filed by the petitioner fails and hereby dismissed. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the Appropriate Government as well as to the Labour Officer, Shimla zone for further action. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 3rd Day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

BEFORE ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Reference Number : 64 of 2023

Instituted on : 08.05.2023

Decided on : 03.10.2024

Tabe Hussain s/o Late Sh. Aliyas r/o Village Ghunglon, P.O. Dhoulakuan, Tehsil Paonta Sahib, District Sirmaur, H.P. . . Petitioner.

Versus

The Prop. M/s G4S Secure Solutions (India), Pvt. Ltd. Maya Plaza, 1st Floor, Dhan Singh Thapa Marg, Near SBI Bank, P.O. Garhi Cantt. Dehradun, Uttrakhand-248003 . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Ex-Parte

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Tabe Hussain /o Late Sh. Aliyas, r/o Village Ghunglon, P.O. Dhoulakuan, Tehsil Paonta Sahib, District Sirmaur, H.P. by the Prop. M/s

G4S Secure Solutions (India), Pvt. Ltd. Maya Plaza, 1st Floor, Dhan Singh Thappa Marg, Near SBI Bank, P.O. Garhi Cantt. Dehradun, Uttrakhand-248 003 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. The case was listed for the evidence of the petitioner but, neither the parties nor any counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte.*

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"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."

5. Rule 22 reads thus:—

"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."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"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."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to

imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference No	:	74 of 2017
Instituted on	:	19.05.2017
Decided on	:	18.10.2024

Ravinder Sharma (Reporter/Journalist) s/o late Shri Ram Nath Sharma, R/o Village Chamat, P.O. Deothi, Tehsil & District Solan, H.P. . . *Petitioner*.

Versus

1. M/s Dainik Jagran Prakashan Ltd. through the District Bureau Chief, Opposite Children Park, The Mall Solan, District Solan, H.P.

2. M/s Dainik Jagran Prakashan Ltd. Village Banoi, Tehsil Shahpur, District Kangra H.P.

Reference under Section 17(2) of the Working Journalists and other Newspaper Employees (Conditions of Services and Miscellaneous Provisions) Act, 1955.

For the petitioner : Sh. H.S. Rana, Advocate

For the respondent : Sh. Rahul Mahajan, Advocate.

AWARD

The Labour-*cum*-Conciliation Officer, Solan Zone Solan has made the following reference to this Court after failure of the conciliation proceedings:

> "**Whether non-payment of wages as per recommendation of Majithia Wage Boards constituted under Section 9 of the Working Journalists and Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 vide notification by the Central government to Shri Ravinder Sharma (an employee) by the management/employer of the M/s Dainik Jagran Prakashan Ltd. Opposite Children Park, The Mall Solan, District Solan, H.P. and M/s Dainik Jagran Prakashan Ltd. Village Banoi, Tehsil Shahpur, District Kangra H.P. is legal and justified? If yes, what amount of arrears of unpaid wages or claim and interest, compensation or any other relief the above worker is entitled to from the management?"**

2. The case as emerges from the statement of claim is that the petitioner was working as press reporter/journalist in the office of respondents from July, 2007 and had completed more than eight years of service at Solan upto 30.04.2015. Petitioner applied to the Labour Commissioner for granting the salary as per the recommendations of Majitha Wage Board and Manisana Wage Board, which was allowed. Respondents initially paid ₹ 3,000/- per month to the petitioner through bank draft no. 04330051. Petitioner regularly worked with the respondents till 30.4.2015 and he was paid ₹ 8,246/- through draft no. 04330014. Respondents used to pay wages to the petitioner at very lower side. Respondents paid ₹ 6,591/- in the month of March, 2011 and in the month of April, 2011 ₹ 6,920/- was paid to the petitioner. Respondents have failed to pay salary to the petitioner as per the recommendations of Majithia Wage Board, which is totally against the fundamental rights of the petitioner and is discriminatory and arbitrary action of the respondents. The claimant has calculated the arrears of salary as per the Majithia Wage Board recommendations and the total calculation of the claim has been annexed as Annexure P-8. Through, this claim, it is prayed that the respondents be directed to pay the arrears along-with 18% interest to the petitioner as per the recommendations of Majitha Wage Board. The claim is supported with an affidavit of Shri Ravinder Sharma.

3. Notice of this claim was sent to the respondents in pursuance thereof the respondents contested the claim by filing reply, whereby the preliminary objections have been taken that the claim petition filed by the claimant is neither competent nor maintainable, M/s Dainik Jagran Prakashan Ltd. is no legal entity, M/s Jagran Prakashan Ltd. is a registered company under the provisions of the Act, which is printing and publishing newspaper under the title of "Dainik Jagran" from its establishment situated at Village Banoi Tehsil Shahpur, District Kangra. Petitioner does not fall under the category of newspaper employee as per Clause 2 (c) of Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (hereinafter to be referred as the Act) nor a non-journalist newspaper employee as per Clause 2 (dd) of the Act as the petitioner was never appointed as a press reporter/journalist by respondent and there exists no employee-employer relationship between the parties. As per clause 9 of the agreement executed between the petitioner and Jagran Prakashan Ltd. in case of any dispute arising out of this agreement was agreed to refer to the Arbitrator *i.e.* Managing Director of Jagran Prakashan Ltd. On merits, it was disputed that petitioner was working as press reporter/journalist with M/s Jagran Prakashan Ltd., since July, 2007. It was claimed that on 01.07.2007, the petitioner

entered into an agreement to work with the respondents as commission agent and for this purpose Jagran Prakashan Ltd. had agreed to pay him professional service charges as well as commission charges of 15% for the advertisement booked which is actually materialized for publication. As per agreement dated 01.07.2007, it was agreed that there would be no master-servant relationship between the parties. The petitioner in addition to agreement dated 1.7.2007, had also sworn an affidavit, whereby vide clauses 6 & 7, he had affirmed that his main profession is agriculture, yet he wanted to pursue journalism as a hobby and there would be no employee-employer relationship between the parties. It was claimed that the petitioner is not entitled to any amount as per the recommendations of Majithia Wage Board. It was claimed that there is no office or authority under the name and style of District Bureau Chief, M/s Dainik Jagran Prakashan Ltd. Solan, and there is a sub office of M/s Jagran Prakashan Ltd. at Solan only for the purpose of collecting and sending the news item and advertisement. It was averred that application dated 15.9.2016, was never served by the petitioner nor any copy was received from the office of the Labour Commissioner or Labour Office Solan. The account ledger relied by the petitioner appears to have been maintained by him at his own or by the bank of the petitioner. The payment whichever has been made to the petitioner has been made in terms of agreement dated 01.07.2007 and prayed for the dismissal of the claim.

4. Petitioner filed rejoinder in which he denied preliminary objections raised by the respondent and also denied the averments as made in the reply and reaffirmed those as made in the statement of claim.

5. On the pleadings, this Court formulated the following issues on 20.02.2018.

1. Whether non-payment of wages to the petitioner as per recommendations of Majithia Wage Board constituted under Section 9 of the Working Journalists and other Newspapers Employees (Condition of services) and Miscellaneous Provisions Act, 1955 by the respondents is illegal and unjustified, as alleged? . .*OPP*.

2. If issue no. 1 is proved in affirmative, to what amount of arrears of unpaid wages or claim and interest, compensation or any other relief the petitioner is entitled to? . . *OPP*.

3. Whether the petition is neither competent nor maintainable, as alleged? . . *OPR*.

4. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. Petitioner in support of his claim examined five PWs, whereas respondent examined Shri Randeep Singh, Assistant General Manager as RW-1.

7. I have heard the Ld. Counsel Shri H.S Rana, Advocate for the petitioner and Shri Rahul Mahajan, Advocate for the respondents and gone through the written submissions placed on record by both the parties as well as records of the case carefully.

8. 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 : Not entitled to any relief.

Issue No. 3 : Yes

Relief : Reference is answered in Negative as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3

9. All these issues are intermingled and inter-connected and require common appreciation of the evidence, as such all these issues are taken up together for the purpose of determination.

10. Onus to prove issues no.1 & 2 is on the petitioner whereas the onus to prove issue no.3, is on the respondents.

11. The claim of the petitioner is based upon the fact that Central Government constituted Majithia Wage Board for revision of wages of newspaper establishments and the Majithia Wage Board recommended revision in wages on 01.07.2010. The said recommendations were accepted by the Central Government *vide* notification dated 11.11.2011. The recommendations of the Majithia Wage Board were notified by the Government, which were challenged by the various newspaper agencies before the Hon'ble Apex Court, however, the Hon'ble Apex Court has upheld the recommendations of the Majithia Board.

12. Before proceeding further, it would be appropriate to first discuss the evidence which is on record.

13. To prove his case, the petitioner stepped into the witness box as PW-3 and led his evidence by way of affidavit PW-1/A, which is just a reproduction of the averments as made in the petition. Petitioner also placed on record copy of identity card as Ex. PW-3/B, recovery certificate as Ex. PW-3/C, newspaper cuttings as Ex. PW-3/C-1 to Ex. PW-3/C-15, copy of Bank statement as Mark P-3, calculation sheet as Mark P-4, copy of statement of account Mark P-5 to Mark P-7 and copy of attendance sheets Mark P-8 (18 pages).

14. During cross-examination, he deposed that no appointment letter was issued to him by the respondents. He admitted that he had executed agreement dated 07.07.2007 and also executed affidavit Ex. R-2. He also admitted that agreement Ex. R-3 bears his signatures but self-stated that he was made to sign this document in the year 2007 and the date was filled later on. He admitted that agreement Ex. R-1 bears signatures of Shri Rahul Mital, the then General Manager and agreement Ex. R-3 bears the signatures of Shri Nishi Kant Thakur, the then Chief General Manager. He deposed that he had not made any complaint to any authority that his signatures were obtained on agreement Ex. R-3 in the year 2007. He admitted that he had executed affidavit Ex. R-4, which bears his signatures. He further admitted that the newspaper is published from Village Banoi, Tehsil Shahpur, District Kangra, H.P. He denied that he was being paid commission and professional services charges in terms of agreement Ex. R-1 and Ex. R-3 for collecting news and advertisements. He admitted that Ms. Rachna Gupta was the Bureau Chief of the respondents and Shri Neeraj Gupta was not the Bureau Chief. He denied that there was no post of District Incharge. He admitted that at Solan office he and Neeraj Kashyap were working and the attendance sheets are handwritten and the same are of his hand. He denied that their attendance sheets were never forwarded to the higher authorities. He deposed that they used to send the attendance sheets by Fax, but he can not produce fax receipts of the same. He admitted that the recovery certificate Ex. PW-3/C is nonest as on today. He further admitted that calculation sheet Mark P-4 was not submitted

when he made complaint dated 15.9.2016 to the Labour Commissioner and stated that the same was submitted later on. He admitted that on the newspaper cuttings Ex. PW-3/C-3, C-4, C-5, C-10 and C-14, the dates have been written by him in his own hand. He denied that he is not entitled for the wages as per the recommendations of Majithia Wage Board.

15. Shri Mahesh Chandra appeared in the witness box as PW-2 to depose that he is posted as Deputy Manager (HR) at Jagran Prakashan Ltd. since 2004. He further deposed that he has not brought the record as no service record and attendance register of commission agents is being maintained by them. During cross-examination, he deposed that the petitioner was commission agent and he was paid commission and not the wages.

16. Shri Neeraj Kashyap, appeared in the witness box as PW-2 to depose that he was posted as District Bureau Chief of the respondents at Solan *w.e.f.* 2006 to 2009 and he was drawing monthly salary @ ₹ 7200/- per month. He further deposed that the petitioner was working as a compositor with the respondents at Solan and his job was to collect news, do typing work and to send the news items to Head Office, Shimla. He further deposed that their duty timings were 10:30 AM to 8:30 PM. He also deposed that the petitioner was getting monthly salary and they used to mark their attendance in attendance sheets, which they used to forward to Head Office, Shimla. The salary was being paid to them through bank draft and the attendance sheets Mark P-1 and P-2 bears his signatures encircled in red.

17. During cross-examination, this witness has deposed that he does not have any appointment letter appointing him as Bureau Chief. He denied that the petitioner was working as a commission agent with the respondents and he was being paid commission. He further denied that he was also kept as a commission agent, when Shri Ramesh Singta left the job with the respondents. He also denied that the amount which used to be remitted to them through bank draft, was the commission and not the wages. He denied that there was no Bureau Chief at District level. He admitted that there was one post of State Bureau Chieft and Ms. Rachna gupta was the State Bureau Chief at that time. He denied that head office of respondents is not at Shimla. He admitted that except him and petitioner no other person was working at Solan office. The attendance sheets Mark P-1 and Mark P-2 are handwritten and the name of Dainik Jagran is also handwritten.

18. Shri Ravinder Panwar, appeared into the witness box as PW-4 to depose that the Dainik jagran has a sub office at Solan and he worked as District Incharge of Dainik Jagran at Solan from December, 2009 till Feb., 2017. He further deposed that the petitioner was working with the respondents as reporter and he used to work from 10:00 AM to almost 8:00 PM. The petitioner was paid monthly wages by way of cheques received from the Dainik Jagran Dharamshala Office and the attendance of the petitioner was marked and sent to the office at Banoi and he used to sign the attendance sheet. Dainik Jagran had about 250-300 employees in Himachal Pradesh. Mark P-8 bears his signatures as well as that of petitioner and likewise Mark P-1 and P-2 also bears his signatures.

19. During cross-examination, he admitted that Mark P-1 and Mark P-2 are handwritten and the name of Dainik Jagran is also handwritten. He admitted that Mark P-1, Mark P-2 and Mark P-8 are not in the form of a register as contemplated under the Factory Act. He deposed that the attendance sheets Mark P-1, Mark P-2 and Mark P-8 were prepared either by him or by the petitioner himself. He denied that he had not sent the attendance sheets to the head office. He stated that he has no knowledge that the agreements Ex. R-1 & Ex. R-3 and affidavits Ex. R-2 and Ex. R-4 were executed between the petitioner and the management. He denied that the petitioner only used to get commission for his work.

20. PW-5 Ms. Jyoti Sharma, appeared into the witness and deposed that the petitioner had moved an application to the Labour Commissioner on 19.09.2016 *vide* Ex. PW-5/A upon which notification has been issued by the Labour-cum-Conciliation Officer on 21.03.2017.

21. During cross-examination, this witness has admitted that the Labour Commissioner can refer the matters relating to the Majithia Wage Board to the Court. However, a court question was put to this witness that how the Labour-cum-Conciliation Officer has made a reference to this court directly? The witness has answered that the appropriate government *vide* notification dated 18.10.2016 conferred the powers under sub section 1 of Section 17 of the Act to specify the Labour Officer to be the authority with in their respective jurisdiction for the purpose of Section 17.

22. This is the entire evidence which has been led by the petitioner.

23. In order to rebut the case of the petitioner, respondents examined Shri Randeep Singh Assistant General Manager of respondents as RW-1. He led his evidence by way of affidavit RW-1/A, which is just a reproduction of the averments as made in the reply filed by the respondents. He also placed on record copy of resolution Ex. RW-1/B, news items published on 6.10.2019 as Mark RA and 20.10.2019 as Mark RB.

24. During cross-examination, he deposed that he has not placed any proof to the effect that the petitioner was commission agent. He denied that the petitioner worked as press reporter /journalist from 2007 to 2015. Self-stated that he worked as commission agent. He denied that the news items sent by the petitioner were not published in the newspaper in the capacity of commission agent and self-stated that the commission agents were provided the work for area circulation/promotion, advertisement and collection of news. He denied that the petitioner was not working as commission agent and he was regular employee. He admitted that the petitioner was paid fixed monthly payments and he was paid initially ₹ 3000/- per month and later he was paid ₹ 6920/- and thereafter ₹ 8246/- till 2015. He admitted that the petitioner was issued identity card by the respondents wherein he was shown "Sanvad Sehyogi" whereas the word "Anshkalik Sanvad Data" were cut. Self-stated that it can be cut and tick right by anyone. He denied that the signatures of the petitioner were obtained on printed affidavit and the petitioner was shown wrongly as commission agent to deny the employer-employee relationship. He admitted that the news items Ex. P/C6 to Ex. P/C 13 were published in the name of the petitioner. He denied that the petitioner is covered under the recommendation made by the Majithia Board.

25. This is the entire evidence led by the respondents.

26. So far as the claim of the petitioner is concerned, he has based his claim on the recommendations of Majithia Wage Board and on notification dated 11.11.2011. The claim of the petitioner is also that he was working as a press reporter/journalist in the office of the respondents with the initial pay of ₹ 3,000/- per month since July, 2007 and thereafter his wages were revised upto ₹ 8246/-. The petitioner has claimed that he was the regular employee of the respondents as such he is entitled wages as per the recommendations of the Majithia Wage Board.

27. On the other hand, the respondents categorically denied this fact that the petitioner was a regular employee of the respondents and he is entitled wages as per the recommendations of Majithia Wage Board. The respondents have taken a specific plea that the petitioner had worked as a commission agent with the respondents and to support their plea they have placed reliance on agreements Ex. R-1 and Ex. R-3. The petitioner has not disputed execution of these agreements and his signatures thereon but he has taken plea that his signatures were forcibly obtained on these agreements. Admittedly, the petitioner has not filed any complaint against the respondents that his signatures were obtained forcibly on these documents, nor has issued any notice to the respondents in this regard. So much so that the petitioner has also not disputed his signatures on the affidavits Ex. R-2 and Ex. R-4. If these documents are seen, the petitioner through Ex. R-1 had entered into an agreement on 01.07.2007 with the respondents and had agreed to work as commission agent for a period of three years at Solan. As per clause-3, the petitioner was to get Rs. 3,000/- per month as

professional service charges from the respondents. As per clause-6, it was specifically mentioned that there shall be no relationship of master and servant in between the parties. Similar, is agreement Ex. R-3 which was entered between the same parties on 01.04.2012 for a period of three years as such this agreement was valid uptill April, 2015. Now, coming to the affidavits Ex. R-2 and Ex. R-4 whereby the petitioner had affirmed that he was an agriculturist by profession and he was working with the respondents as his hobby. As per clause-7 of these affidavits, he had solemnly affirmed that there would be no relationship of employee-employer between parties. These documents clearly shows that the petitioner was engaged as a commission agent on a monthly emolument as per the clause(s) of agreement(s) and the petitioner had agreed to the terms of the agreements. Petitioner has not produced on record any appointment letter to establish that he was the employee of the respondents nor PW-2 has produced any appointment letter showing him as the employee of the respondents. Though, much reliance has been placed on the attendance sheets, but PW-2, PW-3 as well as PW-4 have admitted that these attendance sheets are handwritten and the name of respondents publication is also handwritten. These attendance sheets were maintained by the petitioner as well as PW-2 and PW-4. If these attendance sheets are seen, these are only a printed sheets maintained by the petitioner himself filled by him. There is no record to establish that it was countersigned by any other official of the respondents to whom the petitioner was reporting. PW-2 has claimed that there attendance sheets were forwarded to Head Office, Shimla whereas PW-4 has stated that attendance sheets were sent to the office at Banoi, as such these attendance sheets cannot be considered to be a document upon which reliance can be placed to come to the conclusion that the petitioner was a regular employee of the respondents and was working as a press reporter/journalist.

28. In **Ballubhai Javerbhai Panchai Vs. Sandesh, Ltd., and another 1997 (4) LLN 859**, the Hon'ble High Court of Judicature at Bombay has held that whenever an employee working in the newspaper establishment claim the status of a working journalist he has to establish first that he is a journalist and then that journalism is his principal avocation and he has been employed as such journalist. The relevant portion of the aforesaid judgment is reproduced as under:

> "**10. The question, therefore, arises that applying the tests laid down by the Apex Court, can it be said that the petitioner has established that he was working journalist. Even if it assumed that the petitioner proved that he was journalist and his principal avocation was that of the journalist, the second requirement of exclusive employment has not been established by the petitioner and therefore, the petitioner cannot be held to be working journalist. A news photographer may not be full time employee. He may be part time employed by the newspaper establishment but if the said newspaper establishment is the one and the only employer, obviously such news photographer would be a working journalist but from the evidence on record it is not established that for petitioner there is only one employer. Obviously such a person cannot and will not fall within the category of working journalist. In the present case, I have already referred to the cross-examination of the petitioner wherein he admitted that he was attending the functions as the freelancer photographer on his own on getting information and invitation and that he was sending the photographs to all magazines except Chitralok to which he was sending earlier to the joining the Chitrajyot, the publication of respondent no. 1. He admitted that by freelancer he meant that he was not attached to a particular paper. The petitioner, therefore, cannot be said to have established that respondent no. 1 was his sole employer and the appreciation of the evidence by the Tribunal cannot be faulted**."

29. This judgment was followed by the Hon'ble High Court of Allahabad in case titled as **Sandeep Nagar *Vs.* Presiding Officer, Labour Court, U.P. Meerut and others [2022 (172) FLR 45]**. The Hon'ble High Court of Allahabad has held as under:

"13. Exh. E-1 is a critical piece of evidence and would require slightly detailed consideration. The letter of appointment dated 16.06.2011 references the application filed by the petitioner for appointment wherein he had disclosed that his principal avocation is teaching and not journalism and that he was contributing news, stories and report for publication in our Hindi daily, Hindustan, Meerut. On the foot of the said credentials given by the petitioner in the letter dated 07.04.2011, the terms and conditions of his appointment are stated.

14. ……

15. The labour court which had the benefit of observing the demeanor of the witnesses disbelieved the defence of the petitioner that he had repudiated the appointment letter.

16. To the contrary, the labour court which also observed E.W. -1 Pankaj Kumar Srivastava during his deposition and found his testimony to be credible. A perusal of the testimony of Pankaj Kumar Srivstava as appended to the writ petition discloses that the credibility of the said witness could not be shaken after cross examination.

17. The petitioner had also admitted his signatures to the aforesaid appointment letter. Heavy burden lay upon the petitioner to dispute the correctness of the contents of the appointment letter dated 16.06.2011 which, as seen earlier, he failed to discharge. Denial of the letter dated 16.06.2011 of the petitioner was weak and self-serving and was rightly distrusted by the labour court. Similarly there is no error in the labour court award upholding the credit of EW-1 as a witness and believing his testimony.

18. The arrative shall now be fortified by statutory provisions and good authority in point.

Section 2f of the Act, 1955 is reproduced below:

> **"working journalist" means a person whose principal avocation is that of a journalist and 2[who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishments], and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person who—**
>
> **(i) is employed mainly in a managerial or administrative capacity, or**
>
> **(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature."**

19. The Bombay High Court in Ballubhai Javerbhai Panchal Vs. Sandesh Limited and others, reported at 1997 SCC OnLine Bom 598, while considering the provisions of the Act of 1955 as well as the Industrial Disputes Act, 1947, held that to come within the ambit of "working journalist" as defined in the Act of 1955, the employee has to establish that his principal avocation is journalism.

20. It was thus duly proved by legal evidence before the labour court that the petitioner was not a full time journalist and that his principal avocation was teaching. Further the respondent no. 2 was not his sole employer. With these facts conclusively established in the above said manner, the finding of the labour court that that petitioner does not fall within the ambit of "working journalist" as defined in the Act of 1955 cannot be faulted."

30. Coming to the case in hand since the petitioner has failed to establish on record that he was a full time journalist and his main avocation was journalism, he cannot be considered to be a journalist under Section 2(C) or non-journalist newspaper employee under Section 2(dd).

31. Even, for the argument sake, if it is considered that the petitioner was a regular employee of the respondents then also there is no evidence on record to establish that in which group of employee he falls nor there is any evidence that in which group of the employee he was to be fixed as per the recommendations of Majithia Wage Board. Apart from that the petitioner has also not classified the class of newspaper establishment with which he was working.

32. As per the case of the petitioner, he worked with the respondents w.e.f. July, 2007 to 30.04.2015 and thereafter he had left the job at his own. At the time when the petitioner had moved application before the Labour Officer, there was no relationship of employer and employee between the parties.

33. The other point which was raised in this reference by the respondents is that the provisions of Section 17(2) of the Act are similar to the provisions of Section 33-C(2) of the Industrial Disputes Act. The powers uner section 33-C(2) of the I.D Act confined on the Labour Court are that of executing Court as such the petitioner could not raise any dispute under Section 17(2) of the Act which was not pre-adjudicated or predetermined. The petitioner has raised the claim for difference in pay as per the recommendations of Majithia Wage Board. The reference has been made to this Court under Section 17(2) of the Act. Section 17of the Act reads 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 authorized by him in writing in this behalf or in 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 die, it shall issue a certificate for that amount to the Collector, and the Collector or 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 question so referred were a matter referred to the Labour Court for the adjudication under that Act or law.

(3) .....

34. The Hon'ble High Court of Judicature of Madras in **WP No. 6343 of 2022 dated 15.04.2022 case titled as S. Madhavan *Vs.* M/s THG Publishing Pvt. Ltd. (formerly M/s Kasturi & Sons Ltd.) 859 and 860 Anna Salai Chennai-6000002** has dealt with the similar matter. The Hon'ble high Court of Madras has considered the scope of Section 17(2) of the Act and held as under:

"10. **It is not disputed that the claim of the petitioner for difference in Dearness Allowance for the period 11.11.2011 is based on the Award of the Majithia Wage Board, which was approved by the Government of India on 11.11.2011 and confirmed by the Hon'ble Supreme Court in W.P.(Civil)No.246 of 2011 on 07.02.2014. The petitioner's raised a dispute claiming difference in Dearness allowance and the same was referred to the Labour Court by the Government of Tamil Nadu in G.O.(ID) 441 dated 21.07.2016 under Section 17 (2) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act 1955. During the pendency of the said reference in the present 205/2011 the petitioner's were retrenched and hence the complaint under Section 33(1) (a) of the I.D. Act was filed. Let me now refer to the provisions of the Working Journalist Act as well as the ID Act which are relevant for the purpose of this case. Section 2(K) of the ID Act reads as follows:**

"2(k)"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; "

Section 17(2) of the Working Journalist Act which reads as follows:

"17(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."

11. The reading of Section 17(2), particularly the phrase "as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law", in my view cannot convert the question into a dispute as defined and understood under Section 2(K) of the I.D. Act. The words, as if the question so referred were a matter referred to the Labour Court for adjudication under the act or law" would only mean that while answering the question the Labour Court would adjudicate it in the same manner as it would adjudicate a reference under the I.D. Act. To say that the reference of the question to the Labour Court changes the character of the reference into an industrial dispute goes against the letter and spirit of the said provision. The legislature has used the term "refer the question". The legislature has consciously avoided the term 'dispute', because the legislature was aware that the term 'dispute' has its own connotations under the I.D Act. From a reading of the definition of Industrial Dispute under Section 2(k), it is clear that the question that is referred under Section 17(2) cannot be construed as an industrial dispute. An industrial dispute referred to therein is in

relation to non employment, the terms of employment or conditions of labour. Whereas the question under Section 17(2) relates to computation of claim and hence, it would not fall under the definition of industrial dispute under the ID Act.

12. As rightly contended by the learned counsel for the respondent Section 17 of the Working Journalist Act is akin to Section 33(C)(2) of the I.D Act. It is well settled by catena of Judgments of this Court as well as Hon'ble Supreme Court that the jurisdiction exercised by the Labour Court under Section 33(C)(2) is that of an Executing Court. In the present case, it is seen that the recommendations of the Majithia Wage Board were accepted by the Government of India on 11.11.2011 and the same was challenged before the Hon'ble Supreme Court, which confirmed the recommendations of the Majithia Wage Board, but with modification that the same would be effective from 11.11.2011 only.

13. It is the respondents' case that the respondent had paid the dues to the petitioner and other employees as per the order of the Hon'ble Supreme Court in 2014-2015 itself, but the petitioner claimed higher Dearness Allowance and therefore petitioned the Government under the Working Journalist Act. The Government in terms of Section 17 of the Working Journalist Act referred the claim petition to the Principal Labour Court. The aforesaid facts clearly establish that the question referred to was a claim relating to the computation of difference in the Dearness Allowance paid by the respondent to the petitioner. In my view, the question referred to the Labour Court on the basis of the Majithia Wage Board recommendations relates to computation of Dearness Allowance under Section 17(2) of the Working Journalist Act and hence not an industrial dispute as defined in the Industrial Disputes Act. I am fortified in my view by the Judgment of the Hon'ble Division Bench of the Gujarat High Court in Keshavlal M.Rao Vs. State of Gujarat and Others reported in 1993 (1) LLN 373. The Hon'ble Chief Justice, S.Nainar Sundaram, J. while considering similar issue held as follows:

"Section 17 to a very great extent by verbalism and by implications stands in pari materia with Section 33C of the Industrial Disputes Act, 1947. Section 33C(1) of the Industrial Disputes Act, 1947 is comparable with Section 17(1) of the Act; and Section 33C(2) of the Industrial Disputes Act, 1947 is comparable with Section 17(2) of the Act. The scope of Section 33C of the Industrial Disputes Act, 1947 has come up for consideration by pronouncements not only at the level of the High Courts but also at the level of the Apex Court of the land. They are incisive and they have, without any ambiguity characterized the machinery under Section 33C(2) of the Industrial Disputes Act, 1947 as one relatable to execution stage and not at the adjudicatory level over the right to relief claimed by applicant and denied by the opponent. They have held that investigation into and determination of any dispute regarding the applicant's right to relief and the corresponding liability of the opponent will be outside the scope of the said provision. The set of expression found in Section 33C(2) of the Industrial Disputes Act, 1947 is "If any question arises as to the amount of money due", from the employer to the workman. As already noted, the set of expressions used in Section 17(2) of the Act is "If any question arises as to the amount due under this Act to a newspaper employee from his employer". Under Section 33C(2) of the Industrial Disputes Act, 1947, the specified Labour Court decides that question. Under Section 17(2) of the Act, the question gets referred to the Labour Court for its decision over it. The similar features between the two provisions are very portent and on the basic

factor that the provisions are in pari materia, there is every warrant for applying the ratio of the judicial pronouncements delineating the scope of Section 33C(2) of the Industrial Disputes Act, 1947 to delineate the scope of Section 17(2) of the Act."

35. Since, it has been held by the Hon'ble High Court of Madras that the provisions of Section 17(2) of the Act are akin to the provisions of Section 33-C(2) of the Act and such proceedings under Section 33-C(2) are summery in nature. Thus, the pronouncement delineating the scope of Section 33-C (2) of the Industrial Disputes Act, 1947 would also be helpful for disposal of this case. The Hon'ble Apex Court in case titled as **Municipal Corporation of Delhi Vs. Razak (1995 SCC 1- 235)** has held as under:

"**Dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33- C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by tile employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33- C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution**".

36. Similar is the judgment(s) of Hon'ble Supreme Court reported in **2006 (109) FLR 530 case titled as Union of India and another *Vs.* Kankuben (dead) by LRs. and others** and **Bombay Chemical Industries Vs. Deputy Labour Commissioner and Anr., 2022 Live Law (SC) 130**.

37. In view of the discussion made hereinabove, it is amply clear that the jurisdiction of Labour Court under Section 17(2) of the Act is limited to the computation of amount due and it cannot decide the dispute as to the entitlement of the petitioner to be fixed in a particular group or to determine that for what salary he is entitled to under the recommendations of Majithia Wage Board. In **Navbharat Press Employees union, Mafatlal Employees Union *Vs.* State of Maharashtra, Labour Industries and Energy Department and Ors., 2009 (III) Bom LR 4347**, the double bench of Hon'ble High Court of Bombay has held that the question as to which class the petitioner falls involves detailed investigation as regard gross revenue of respondent establishment, therefore, the same cannot be termed as mere implementation or execution of the Manisana Award. The relevant para of the aforesaid judgment is as under:

"15. **The dispute in this case is as regards entitlement of the members of the petitioner union to higher watges on the basis that respondent 5 falls in class II and not in class IV of clause 6 of the Manisana Award and, therefore, the basic question which has to be decided is as to in which class respondent 5 falls. That would involve a detailed investigation as regards gross revenue of respondent 5. For that purpose, various documents including the balance sheet of respondent 5 will have to be gone into. Therefore, this is not a mere implementation or execution of the said Manisana Award**."

38. The Hon'ble Apex Court in case titled as **Kasturi and Sons PrivateLtd., *Vs.* N. Salivateswaran and another AIR 1958 507**, has held that the enquiry contemplated under Section 17 of the Act is a summary enquiry of a very limited nature and its scope is confined to the

investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree and award. The relevant paras of the aforesaid judgment are reproduced as under:

"8. **It is significant that the State Government or the specific authority mentioned in s. 17 has not been clothed with the normal powers of a court or a tribunal to hold a formal enquiry. It is true that s. 3, sub-s. (1) of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to sub-s. (2); but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act. This section cannot be read as conferring on the State Government or the specified authority mentioned under s. 17 power to enforce attendance of witnesses, examine them on oath, issue commission or pass orders in respect of discovery and inspection such as can be passed by the boards, courts or tribunals under the Industrial Disputes Act. It is obvious that the relevant provisions of s. 11 of the Industrial Disputes Act, 1947, which confer the said powers on the conciliation officers, boards, courts and tribunals cannot be made applicable to the State Government or the specified authority mentioned, under s. 17 merely by virtue of s. 3(1) of the act.**

9. **In this connection, it would be relevant to remember that s. 11 of the act expressly confers the material powers on the Wage Board established tinder s. 8 of the Act. Whatever may be the true nature or character of the Wage Board-whether it is a legislative or an administrative body-the legislature has taken the precaution to enact the enabling provisions of s. 11 in the matter of the said material powers. It is well known that, whenever the legislature wants to confer upon any specified authority powers of a civil court in the matter of holding enquiries, specific provision is made in that behalf. if the legislature had intended that the enquiry authorized under s. 17 should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, the legislature would undoubtedly have made an appropriate provision conferring on the State Government or the specified authority the relevant powers essential for the purpose of effectively holding such an enquiry. The fact that the legislature has enacted s. 11 in regard to the Wage Board but has not made any corresponding provision in regard to the State Government or the specified authority under s. 17 lends strong corroboration to the view that the enquiry contemplated by s. 17 is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employee after establishing his claim in that behalf. We are reluctant to accept the view that the legislature intended that the specified authority or the State Government should hold a larger enquiry into the merits of the employee's claim without conferring on the State Government or the specified authority the necessary powers in that behalf. In this connection, it would be relevant to Point out that in many cases some complicated questions of fact may arise when working journalists make claims for wages against their employers. It is not unlikely that the status of the working journalist, the nature of the office he holds and the class to which he belongs may themselves be matters of dispute between the parties and the decision of such disputed questions of fact may need thorough examination and a formal enquiry. If that be so it is not likely that the legislature could have intended that such complicated questions of fact should be dealt with in a summary enquiry indicated by s. 17."**

39. Coming to the reference in hand, though the petitioner has produced on record Ex. PW-3/C, but in his statement, he has admitted that this certificate is nonest as of today. Otherwise also the petitioner has not based his claim on certificate Ex. PW-3/C rather the petitioner had moved an application before the Conciliation Officer for implementation of the recommendations of Majithia Wage Board and as per the statement of petitioner, he has based his claim upon calculation made in Annexure P-8, which was not the base of recovery certificate Ex. PW-3/C. The reference which has been sent to this Court is not on the basis of recovery certificate Ex. PW-3/C. It is evident from the record that the application was primarily made by the petitioner before the designated authority under the Working Journalists (conditions of Service) and Miscellaneous Provisions Act, 1955 for issuance of recovery certificate under section 17(1) of the Act. Thus, it is amply clear that the application was preferred by the petitioner under section 17(1) of the Act. Coming to the reference in hand, the Labour-cum-Conciliation Officer, Shimla zone while exercising the powers vested in him vide notification dated 18.10.2016 has referred the dispute under Section 17(2) to this Court. Now, if the above notification is perused, the same reads as under:

> "**In exercise of powers conferred as sub-section (1) of Section 17 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Act, 1955 (45 of 1955), the Governor of 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**."

There is nothing on record to remotely suggest that the powers were also conferred upon the Labour-*cum*-Conciliation Officer, Shimla vide any notification issued by the Government to refer the matter to this Court even under Section 17(2) of the Act.

40. Now, the question which has been raised before this Court is as to whether the Labour-cum-Conciliation Officer, Shimla was competent to refer the matter to this Court in view of notification dated 18.10.2016, as referred to supra under Section 17(2) of the Act. In this regard, it would be beneficial to refer to the judgment of Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in WP No. 6402 of 2019 dated 17.11.2022 case titled as **All India Reporter Private Limited, a Company incorporated and registered under the Companies Act having its registered office at Medows House, Nagindas Master Road, Fort, Mumbai-400023 and its industrial establishment at Congress Nagar, Nagpur, through its Managing Director-Shri Sumant Widyadhar Chitaley (Original Party No.1). *Vs.* The State of Maharashtra, through the Secretary, Department of Industries, Energy and Labour, Mantralaya, Mumbai and anr.** The relevant portion of the judgment is reproduced as under:

> "6] **In the light of the rival submissions, the question that deserves consideration is whether it is open for the State Government to delegate its power of referring a question arising under the Act of 1955 to any authority or whether such power has to be exercised by the State Government itself. To consider the said question, it would be necessary to refer to the provisions of Sections 17(1) and (2) of the Act of 1955, which read thus :**
>
> **"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 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."

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. ……..

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".

41. This judgment was followed by the Hon'ble High Court of Bombay, Aurangabad Bench in case titled as **Head of Human Resources, Dainik Bhaskar Group Vs. Dinesh Devidas Pardeshi 2023 (177) FLR 2018**.

42. Thus, it is amply clear from the above judgments that powers under Section 17(2) of the Act cannot be delegated to the Labour-cum-Conciliation Officer, Shimla to make a reference under Section 17(2) of the Act nor any such notification has been produced or brought to the notice of this Court that the Labour-cum-Conciliation Officer, Shimla was authorized to make a reference to this Court even under Section 17(2) of the Act.

43. In view of the discussion made hereinabove, and in view of the ratio of judgment of Hon'ble High Court of Bombay at Nagpur bench, followed by the Hon'ble High Court of Bombay at Aurangabad Bench (supra), that the Government cannot delegate its powers under Section 17 (2) of the Act to any Labour Officer to file a reference in this regard before this Court. The reference, thus, which has been made to this Court is without any jurisdiction and the same is not maintainable. In view of above discussion issues no.1 and 2 are decided against the petitioner whereas issue no.3 is decided in favour of the respondents.

Relief

44. In view of my findings on issues no.1 to 3, above, the claim filed by the petitioner fails and hereby dismissed. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the Appropriate Government as well as to the Labour Officer, Shimla zone for further action. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 18th Day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No : 197 of 2018

Instituted on : 01.12.2018

Decided on : 21.10.2024

Vikram Kumar S/o Sh. Kashmiri Lal, R/o V.P.O. Patta, Tehsil Bhoranj, District Hamirpur, H.P. . . *Petitioner*.

Versus

The Factory Manager, M/s Lotus Herbals Colour & Cosmetics, Plot No. 80-B, EPIP, Jharmajri, Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Vishal Sharma, Advocate

For the respondent : Shri Rajeev Sharma, Advocate

AWARD

The following reference was received for adjudication from the appropriate Government:

"**Whether Sh. Vikram Kumar s/o Sh. Kashmiri Lal, r/o V.P.O. Patta, Tehsil Bhoranj, District Hamirpur, H.P. is covered under the definition of workman as provided under Section 2(s) of the Industrial Disputes Act, 1947? If not, its effect? and if yes, whether the termination of his (Sh. Vikram Kumar s/o Sh. Kashmiri Lal) services *w.e.f.* 09.03.2017 by the Factory Manager, M/s Lotus Herbals Colour & Cosmetics, Plot No. 80-B, EPIP, Jharmajri, Nalagarh, District Solan, without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

2. The case of the petitioner as it emerges from the statement of claim is that the petitioner/claimant was employed in the respondent company since 2014 as Senior Supervisor and since then the petitioner had worked with full devotion and sincerity. The respondent company started creating labour problem in violation of labour laws and the petitioner along-with some other workers made a representation before the management for their day to day problems. The respondent company ignored the problems of the petitioner and other workers in one way or the other and with malafide intention issued show cause notice to the petitioner by blaming that the petitioner has not done his work correctly. The aforesaid show cause notice was never served upon the petitioner despite that the respondent company chargesheeted the petitioner before holding the independent domestic enquiry and further appointed Shri Hardesh Sharma, Advocate Ward No.9, Nalagarh District Solan as an enquiry officer without the consent of the petitioner. The request of the petitioner for defence assistant was declined by the enquiry officer and enquiry has been conducted against the principles of natural justice as no reasonable opportunity of being heard was afforded to the petitioner. The petitioner was pressurized to make statement which could be used for terminating his services. No enquiry report was supplied to the petitioner by the enquiry officer and management. The enquiry has been conducted in violation of the mandatory provisions of the Industrial Disputes act, 1947 (hereinafter to be referred as the Act). The petitioner and his family members have been put to starvation due to illegal termination of his services. Through this claim petition, petitioner has prayed that the order of termination be set aside and the petitioner be reinstated in service with all consequential benefits.

3. Notice of this claim was sent to the respondent. In pursuance thereof respondent contested the claim by filing reply, wherein the respondent took preliminary objections that the petition is not maintainable. It was averred that the petitioner was appointed on the post of Production Senior Supervisor on 01.07.2014 *vide* appointment letter and on the day of termination, his salary was ₹ 22,000/-. The duty assigned to the petitioner by the officers of the factory was

purely supervisory in nature, the petitioner was the incharge of his section and he was supervising the work of his subordinates. The petitioner does not fall within the definition of workman as per section 2(s) of the Act as such the reference is not maintainable and competent. Additional plea was also taken by the respondent that the petitioner has indulged into grave misconduct during the course of his employment as such he was chargesheeted and an independent enquiry was conducted against him. During enquiry, the petitioner was afforded full opportunity to attend the proceedings and to cross-examine the management witnesses and he was also granted opportunity to bring his own witnesses. It was averred that the petitioner is gainfully employed as such he is not entitled to any benefits as claimed by him. On merits, it was reiterated that the petitioner was discharging supervisory duties as such he does not fall within the definition of "workman" as provided under Section 2(s) of the Act and enquiry was conducted in fair manner. It was averred that the petitioner was dismissed *vide* letter dated 03.01.2018 and his full and final financial benefits of ₹ 11,276/- were paid to him, and prayed for the dismissal of the claim.

4. No rejoinder was filed

5. On the pleadings, this Court formulated the following issues on 29.10.2021

1. Whether the domestic enquiry conducted against the petitioner is in violation of the principles of natural justice as alleged? . . *OPP*.

2. Whether the application is not maintainable in the present form, as alleged? . . *OPR*.

3. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. I have heard the Ld. Counsel for the parties and have also gone through the record with care.

8. 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 : Yes

Relief : Reference is answered in negative as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 2

9. Being legal issue, issue no.2 is taken up first as it goes to the roots of the reference sent to this Court.

10. The case of the petitioner is that he was appointed as Senior Supervisor in the year 2014. Since he along-with some other workers had raised some issues regarding labour problems

with the management, he was chargesheeted and thereafter an enquiry was conducted against him by the respondent management and Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who conducted the enquiry against the mandatory provisions of the Act and in violation of the principles of natural justice. It is claimed that the petitioner was not afforded due opportunity to defend himself and his services were terminated illegally.

11. On the other hand, the plea taken by the respondent is that the petitioner was employed as Production Senior Supervisor as such he does not fall within the definition of "workman" as prescribed under Section 2(s) of the Act.

12. In terms of the reference, it is incumbent upon this Court to first decide the question as to whether the petitioner falls within the definition of "workman" or not?

13. Now, coming to the reference in hand, it is admitted fact that the petitioner was appointed as Senior Supervisor, Production by the respondent company in the year 2014. The petitioner has led evidence by way of affidavit Ex. PW-1/A which is just a reproduction of the averments as made in the claim. He has reasserted that he was pointed in the respondent company in July 2014.

14. During cross-examination, he has denied that he was discharging his duties as Senior Supervisor, Production and claimed that he was workman and was promoted later on in the year 2015. He admitted that he was working as Senior Supervisor in 2017 on the monthly salary of ₹ 22,000/-. He also admitted that the profile of his job was supervisory in nature and workers were working under him.

15. The respondent has also led evidence and examined Shri Mukesh Kumar, Factory Manager as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also placed on record copy of chargesheet Ex. RW-1/B, copy of reply dated 10.3.2017 Ex. RW-1/C, letter dated 23.3.2017 Ex. RW-1/D, 2nd show cause notice Ex. RW-1/E, dismissal letter Ex. RW-1/F, copy of demand notice Ex. RW-1/G and reply filed by the respondent Ex. RW-1/H.

16. During ross-examination not even a single suggestion has been put to this witness by the petitioner that the petitioner did fall in the definition of "workman" as provided under Section 2(s) of the Act. There is no cross-examination that what was the nature of duties of the petitioner nor this fact has been disputed during cross-examination of RW-1 that the petitioner was appointed as Senior Supervisor in the respondent company.

17. So far the statement made by the petitioner in the Court that he was a workman and was promoted later on in the year 2015 is concern, it is the claim of the petitioner himself that he was appointed as a Senior Supervisor in the respondent company in the year 2014. Thus, from the statement of claim and the averments made in the reply as well as the cross-examination of the petitioner and PW-1, it clearly stands established that the petitioner was employed as Senior Supervisor from the very beginning, when he joined the respondent company in the year 2014. Petitioner during his cross-examination has admitted that profile of his job was supervising in nature and workers were working under him. Thus, petitioner has the power and capacity to supervise the work of others and was responsible for quality control. The petitioner has not clarified that if he was not working as Senior Supervisor then what kind of duties he was discharging as such the version of the respondent that the petitioner was appointed as Senior Supervisor and he was discharging supervisory duties, has to be accepted as correct.

18. Before adverting any further it would be apposite to venture in to the legal aspect of the matter, as to whether the petitioner would fall within the terms of section 2(s) of the Act. The Section reads as under:

"**Workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-**

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

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

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

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

19. The definition itself stipulates as to who a workman would be. However, clause-1 to IV are the exceptions which have been carved out to say that the following would not fall within the category of a "workman". The bare reading of the section shows that a person who is employed in a managerial or administrative capacity would not fall within the term of workman and the person who is employed in a supervisory capacity and draws wages exceeding ₹ 10,000/- per mensem and discharge function mainly of a managerial nature would also not come within the purview of the term "workman".

20. Viewed in this context, a bare reading of the claim as well as reply goes to show that the petitioner was working as Senior Supervisor, Production with the respondent company and his work was to inspect and to supervise the production **as per** the quality parameters. No other document has been placed on record by the petitioner to show that he was discharging any other duties or was discharging any manual, unskilled, skilled, technical, operational and clerical work.

21. From the evidence, on record, it is quite clear that the petitioner was employed in supervisory capacity and was drawing wages more than ₹ 10,000/- per mensem. Though, in determining the nature of work, the designation of the employee or the name assigned to him should not be given due importance. The primary duty performed by the person is to be given due importance but coming to the case in hand there is no evidence worth the name to suggest that the petitioner was doing any other duties except to supervise the production in the respondent company**. In Somnath Tulshi Ram Galande Vs. Presiding Officer, IInd Labout Court Pune and others 2008 (4) Mh.L.J 163, the Hon'ble Apex Court has held as under:**

"Where a particular workman is a supervisor within or without the definition of "workman" is "ultimately a question of fact, at best one of mixed fact and law" and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organizational set up of the particular unit of industry and the like factors."

22. The Hon'ble High Court had come to record a finding in the aforesaid case that the appellant therein was undertaking supervisory and managerial work as such he was not covered under the definition of "workman".

23. Similarly, in **S.K. Maini *v.* Carona Sahu Co. Ltd., 1994 AIR 1824,** the Supreme Court has held as under:

> **"After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any straitjacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it ...the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as Section 2(s) of the Industrial Disputes Act.**
>
> **The appellant in the present case had multifarious duties and most of his duties were supervisory and managerial. He had the power and capacity to take decisions, supervise work of others and was also responsible for quality control of the products being manufactured. The character and nature of his duties while seen in the light of the documentary and oral evidence led by the parties, it can be concluded that the appellant was not a 'workman' within the definition of Section 2(s) of the Act. Looking into the admission of the workman and specific language of Exhibit29 and the terms and conditions of his appointment, it is difficult to arrive at any conclusion other than the one arrived at by the Labour Court and the learned single Judge in the impugned order."**

24. Coming to the case in hand from the statement of claim and evidence as available on record there is no hesitation in the mind of the Court to come to the conclusion that the petitioner does not fall under the definition of "workman" as provided under Section 2(s) of the Act as such the reference made by him in this regard and sent to this Court is not maintainable and accordingly issue no.2 is decided in favour of the respondent and against the petitioner.

Issue No.1

25. In view of my findings on issue no.2, above, since this Tribunal has held that the petitioner does not fall withing the definition of "workman" as provided under Section 2(s) of the Act, issue no.1 becomes redundant.

Relief

26. In view of my findings on issues no.1 & 2, above, the claim filed by the petitioner fails and is hereby dismissed by holding that the petitioner is not a workman as prescribed under Section 2(s) of the Act as such he is not entitled to any relief as claimed by him. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 21st Day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No : 22 of 2022

Instituted on : 14.01.2022

Decided on : 21.10.2024

Surender Singh (President) and Sh. Jitender Singh, (General Secretary) Lower Nanti Hydro Project Workers Union, Village Kandri, P.O. Fancha 15/20, Tehsil Rampur, District Shimla, H.P.
. . *Petitioner*.

Versus

1. The Managing Director M/s Suryakanta Hydro Energies Pvt. Ltd. Corporate Office D No. 8-2-269/91/S/G 3rd floor, Road No. 2, Banjara Hills Hydrabad- 500034.

2. The General Manager Lower Nanti Hydro Power Project 14 MW, Project Office at Tyawal, P.O. Jeori, Tehsil Rampur Bushahr, District Shimla, H.P. . . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Sh. Niranjan Verma, Adv.

For the respondents : Sh. Yogvinder Sharma, Adv.

AWARD

The following reference was received for adjudication from the appropriate Government:

"**Whether the demands of Lower Nanti Hydro Project Workers Union Village Kandri, P.O. Fancha 15/20, Tehsil Rampur, District Shimla, H.P. vide their demand notice**

dated 22.08.2019 for hike of 50% of the gross salary/ wages and yearly increment of 15% of basic wages before the management of (i) The Managing Director M/s Suryakanta Hydro Energies Pvt. Ltd., Corporate Office D No. 8-2-269/91/S/G 3rd floor, Road No. 2, Banjara Hills Hydrabad- . (ii) The General Manager Lower Nanti Hydro Power Project 14 MW, Project Office at Tyawal, P.O. Jeori, Tehsil Rampur Bushahr, District Shimla, H.P. is legal and justified? If yes, what relief and benefits the workers are entitled to?"

2. The facts which emerge from the statement of claim are that the petitioner union raised a demand notice dated 22.08.2019, under Section 2(K) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) before the respondent management and the copy thereof was sent to the Labour and Conciliation Officer Kinnaur Zone at Recongpeo, District Kinnaur, H.P. The demands raised in the demand notice were as under:

i. Hike in the monthly salary/ wages. It was remanded that 50% hike of the salary/ wages shall be made w.e.f. 01.07.2019 to the workers.

ii. That 15% annual increment hike be made in the salary of the workers/ contract laborers.

iii. A policy a promotion of the workers be framed.

iv. Safety Measure.—*Workers be provided safety equipments such as helmet, safety shoes, torch, mask etc.*

v. Proper shelter be constructed at the weir site.

vi. Food Allowances.—*It was demanded that food allowance be given to the workers working under weir site at par with the other workers.*

vii. Livery Allowances.—*It was demanded that livery allowance of ten thousand per annum be paid to the workers.*

It is averred that demands raised by the workers union were not adhered/ implemented by the respondents, as such the conciliation proceeding failed and the reference was sent to this Court. It has been prayed through this claim that the demand raised by the petitioner union be allowed and the reference be answered in favour of the worker union.

3. Notice of this claim was sent to the respondents, in pursuance thereof respondents contested the claim by filing reply, in which preliminary objections that the claim is neither competent nor maintainable, petitioner union has not come to the Court with clean hands and suppressed material fact from this Court were taken. On merits, though it was not disputed that the petitioner union had raised demands before the management, however, it was submitted that the petitioner union representing the workers are unskilled workers and gainfully employed who are earning around Rs. 15,000/- to 15,500/- per month. The unskilled workers are local people who have agriculture/ horticulture income also. Therefore, hike of 50% in the wages is not just justified. There is no promotion policy for non-technical staff in the company nor there is job requirements and opportunities at higher level of company. The workers of petitioner union are not assigned any travelling work. It is claimed that the petitioner union has made a false claim and prayed for the dismissal of the claim.

4. No rejoinder was filed.

5. On the pleadings, this Court formulated the following issues on 26.12.2022.

1. Whether the demands of lower Nanti Project workers union *vide* their demand notice dated 22.08.2019 for hike of 50% of the gross salary/ wages ad yearly increment of 15% of basic wages before the respondent management is legal and justified? If yes, what relief the petitioner is entitled to? . .*OPP*.

2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . . *OPR*.

3. Relief.

6. The parties were given due opportunities to lead evidence, but despite several opportunities the workers/office bearers of petitioner union did not appear into the witness box nor examined any witness in support of their claim as such the evidence of the petitioner stood closed *vide* order dated 15.10.2024. Whereas the learned counsel for the respondent *vide* his separate statement, closed the evidence of the respondent without examining any witness.

7. I have heard Ld. Counsel for the parties and have gone through the record of the case carefully.

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

Issue No. 1	:	No. Not entitled to any relief.
Issue No. 2	:	No.
Relief	:	Reference is answered in negative as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1

9. The onus to prove issue no.1 is on the petitioner union. The petitioner union has claimed that they had raised the demand before the management and conciliation was also tried but the respondent management did not implement the demand raised by the workers. However, none of the workers from the petitioner union has appeared into the witness box nor examined any witness in support of their claim as such the evidence of the petitioner stood closed *vide* order dated 15.10.2024. There is nothing on record to prove that the claim raised by the petitioner is correct as such issue no.1 is decided against the petitioner union.

Issue No.2

10. In support of this issue, Ld. Counsel for the respondents had argued that the present claim is neither competent nor maintainable, petitioner union has not come to the Court with clean hands and suppressed with material fact from this Court, however, the respondent has also not led any evidence to prove such allegations. Thus, there is no evidence on record to establish how the present reference is not competent and maintainable. Accordingly issue no. 2 is decided against the respondent.

Relief

11. In view of my findings on issues no.1 & 2, above, the claim filed by the petitioner union fails and is hereby dismissed by holding that the workers of petitioner union are not entitled to any relief as claimed.

12. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 21st Day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

Application no. 29/2024

Pawan Kumar & others

Versus

Factory Manager HFL & another

21.10.2024
Present: Sh. Niranjan Verma, Ld. Csl. for the petitioner

Sh. Rajeev Sharma, Ld. Csl. for respondent no. 1

Sh. N.K. Gupta, Ld. Csl. for respondent no. 2

At this stage, parties have informed this Court that they have settled the matter amicably, before the Deputy Labour Commissioner, Labour Officer, Baddi. The statement of Learned Counsel for the petitioner has been recorded vide which he has been stated that the parties have ammicbly settled the matter before the Deputy Labour Commissioner, Labour Officer, Baddi. The copy of settlement has been produced on record as Ex. PX. He further deposed that as per settlement Ex. PX matter has been settled between the parties and now nothing survives in the present application. Application be dispose off accordingly. Similar statement of Sh. Rajeev Sharma, Ld. Csl. for the respondent has been recorded separately, who has admitted the statement made by the Sh. Niranjan Verma, Ld. Csl. for the petitioner to be correct.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. PX, thereafter, nothing survive in this application.

Statements of the parties as well as Ex. PX shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
21.10.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla, H.P.

Application no. 30/2024

Hemant Kumar & others

Versus

Factory Manager HFL & another

21.10.2024
Present: Sh. Niranjan Verma, Ld. Csl. for the petitioner

Sh. Rajeev Sharma, Ld. Csl. for respondent no. 1

Sh. N.K. Gupta, Ld. Csl. for respondent no. 2

At this stage, parties have informed this Court that they have settled the matter amicably, before the Deputy Labour Commissioner, Labour Officer, Baddi. The statement of Learned Counsel for the petitioner has been recorded vide which he has been stated that the parties have amicably settled the matter before the Deputy Labour Commissioner, Labour Officer, Baddi. The copy of settlement has been produced on record as Ex. PX. He further deposed that as per settlement Ex. PX matter has been settled between the parties and now nothing survives in the present application. Application be dispose off accordingly. Similar statement of Sh. Rajeev Sharma, Ld. Csl. for the respondent has been recorded separately, who has admitted the statement made by the Sh. Niranjan Verma, Ld. Csl. for the petitioner to be correct.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. PX, thereafter, nothing survive in this application.

Statements of the parties as well as Ex. PX shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
21.10.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla, H.P.

Application no. 31/2024

Jiwan Singh & others

Versus

Factory Manager HFL & another

21.10.2024
Present: Sh. Niranjan Verma, Ld. Csl. for the petitioner

Sh. Rajeev Sharma, Ld. Csl. for respondent no. 1

Sh. N.K. Gupta, Ld. Csl. for respondent no. 2

At this stage, parties have informed this Court that they have settled the matter amicably, before the Deputy Labour Commissioner, Labour Officer, Baddi. The statement of Learned Counsel for the petitioner has been recorded vide which he has been stated that the parties have amicably settled the matter before the Deputy Labour Commissioner, Labour Officer, Baddi. The copy of settlement has been produced on record as Ex. PX. He further deposed that as per settlement Ex. PX matter has been settled between the parties and now nothing survives in the present application. Application be dispose off accordingly. Similar statement of Sh. Rajeev Sharma, Ld. Csl. for the respondent has been recorded separately, who has admitted the statement made by the Sh. Niranjan Verma, Ld. Csl. for the petitioner to be correct.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. PX, thereafter, nothing survive in this application.

Statements of the parties as well as Ex. PX shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
21.10.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla, H.P.

Application no. 32/2024

Jeevan Singh & others

Versus

Factory Manager HFL & another

21.10.2024
Present: Sh. Niranjan Verma, Ld. Csl. for the petitioner

Sh. Rajeev Sharma, Ld. Csl. for respondent no. 1

Sh. N.K. Gupta, Ld. Csl. for respondent no. 2

At this stage, parties have informed this Court that they have settled the matter amicably, before the Deputy Labour Commissioner, Labour Officer, Baddi. The statement of Learned Counsel for the petitioner has been recorded vide which he has been stated that the parties have amicably settled the matter before the Deputy Labour Commissioner, Labour Officer, Baddi. The copy of settlement has been produced on record as Ex. PX. He further deposed that as per settlement Ex. PX matter has been settled between the parties and now nothing survives in the present application. Application be dispose off accordingly. Similar statement of Sh. Rajeev Sharma, Ld. Csl. for the respondent has been recorded separately, who has admitted the statement made by the Sh. Niranjan Verma, Ld. Csl. for the petitioner to be correct.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. PX, thereafter, nothing survive in this application.

Statements of the parties as well as Ex. PX shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
21.10.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla, H.P.

Application no. 33/2024

Sanjeev Kumar & others

Versus

Factory Manager HFL & another

21.10.2024
Present: Sh. Niranjan Verma, Ld. Csl. for the petitioner

Sh. Rajeev Sharma, Ld. Csl. for respondent no. 1

Sh. N.K. Gupta, Ld. Csl. for respondent no. 2

At this stage, parties have informed this Court that they have settled the matter amicably, before the Deputy Labour Commissioner, Labour Officer, Baddi. The statement of Learned Counsel for the petitioner has been recorded vide which he has been stated that the parties have amicably settled the matter before the Deputy Labour Commissioner, Labour Officer, Baddi. The copy of settlement has been produced on record as Ex. PX. He further deposed that as per

settlement Ex. PX matter has been settled between the parties and now nothing survives in the present application. Application be dispose off accordingly. Similar statement of Sh. Rajeev Sharma, Ld. Csl. for the respondent has been recorded separately, who has admitted the statement made by the Sh. Niranjan Verma, Ld. Csl. for the petitioner to be correct.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. PX, thereafter, nothing survive in this application.

Statements of the parties as well as Ex. PX shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
21.10.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla, H.P.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No. : 123 of 2020

Instituted on : 18.07.2020

Decided on : 22.10.2024

Chander Singh s/o Sh. Shiv Ram, r/o Village Shilai (Shilli), P.O. Janedghat, Tehsil Kandaghat, District Solan, H.P., through General Secretary, C.I.T.U., District Committee Solan, Khushal Chand Building, 5th Floor, Ward No. 5, Old Bus Stand, Solan, District Solan, H.P.

. . *Petitioner*.

Versus

1. The Executive Engineer, Electrical Division HPSEBL, Solan, District Solan, H.P.

2. The Proprietor, The Universal Training & Research Institute, UTRI Complex, Laxmi Bhawan, North Oak, Sanjauli, Shimla-6

. . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Sh. R.K. Khidtta, Adv

For the respondent no. 1. : Sh. Surinder Sharma, Adv

For the respondent no. 2. : Ex-parte

AWARD

The following reference was received for adjudication from the appropriate Government:

"**Whether the demands of General Secretary, C.I.T.U., Distt. Committee Solan, Khushal Chand Building, 5th Floor, Ward No. 5, Old Bus Stand, Solan, Distt. Solan, H.P. *vide* demand notice dated 20.04.2019 (Copy Enclosed) before (i) The Executive Engineer, Electrical Division HPSEBL, Solan, Distt. Solan, H.P. & (ii) The Proprietor, The Universal Training & Research Institute, UTRI Complex, Laxmi Bhawan, North Oak, Sanjauli, Shimla-6 to regularize the services of Sh. Chander Singh s/o Sh. Shiv Ram, r/o Village Shilai, P.O. Janedghat, Tehsil Kandaghat, District Solan (H.P.), from the date of the regularization of the services of his juniors and further his services shown through the contractor may be held illegal, are proper and justified? If yes, what relief, services benefits and compensation the aggrieved workman Sh. Chander Singh s/o Sh. Shiv Ram, is entitled to from the above employers?"**

2. The facts as emerges from the statement of claim are that the petitioner was engaged as Beldar by the HPSEB Division, Solan under Sub Station Chail in the year, 1996 and he worked as such till December, 2001, thereafter, he has been shown working through contractor namely Vishal without giving any notice and without taking his consent. In fact, the petitioner is continuously working with HPSEBL till date. The work is taken by the concerned JE of the area and petitioner is performing his duties as per the directions of concerned official of the sub Station Chail. Petitioner has nothing to do with the contractor and he is under the supervision and control of the respondent and even his leaves are being sanctioned by the concerned official of the respondent. Petitioner is working for last more than 22 years with the board but his services have not been regularized by the board till date whereas the services of his junior persons namely Udam Singh, Pawan and others have been regularized which is totally illegal as such services of the petitioner deserves to be regularized from the date of regularization of the services of junior persons to him. Petitioner had raised demand notice on 29.03.2017, in which the Joint Labour Commissioner Himachal Pradesh has observed that the demand notice raised by the petitioner under Section 2-A of the Industrial Disputes Act is not maintainable and he was further advised to file the demand notice under Section 2-K of the Industrial Disputes Act and accordingly petitioner filed demand notice through CITU. The work which petitioner is performing since 1996 with the respondent board is still available which fact is clear from the regularization of the services of the junior persons to him. Services of the petitioner shown through the contractor is totally illegal and is voilative of provisions of the Section 9-A of the Industrial Disputes Act. Contract of employment shown with the contractor is "shame and nominal" as day to day work, administrative control and supervision over the petitioner is exercised by the official of the respondent. Though, the petitioner is shown to be engaged though the contractor but there is no license of the respondent to engage the workers on contract basis. The board used to give intentional fictional breaks to the petitioner, whereas junior persons to him were continuously shown in service. Petitioner has completed 240 days in each calendar year and the fictional breaks given to the workman deserves to be held illegal. Petitioner through this petition has claimed that his services be regularized from the date of regularization of the services of junior persons to him and services of the petitioner shown through the contractor be held illegal. Apart from this, petitioner has also claimed cost of litigation and damages of Rs. 50,000/- in each head.

3. Notices of this claim were sent to the respondents, in pursuance thereof respondent no. 1 contested the claim by filing reply, in which respondent no. 1 took preliminary objections that the petitioner has no cause of action and locus standi to file the petition, petitioner has not come to this Court with clean hands, there is no industrial dispute between the petitioner and the respondent no. 1, and claim of the petitioner is not correct and true. On merits, it was denied that the petitioner was engaged as Beldar by the HPSEB Ltd. Division Solan under Station Chail in the year 1996 and he

continued to work as such till December, 2001. It was submitted that respondent no. 1 never engaged the petitioner as Beldar, rather the petitioner was working as labourer with HPSEB Ltd. Sub Division Kandaghat through contractor and he had worked on muster roll basis for some days during the period from 1996 to 2001. The petitioner was called as and when his services were required by the respondent no. 1 and on completion of work petitioner himself left the work. The petitioner was engaged as casual labourer on muster roll through contractor and he never remained employee of HPSEB Ltd. It was denied that the petitioner had been working for the last 22 years. It was reiterated that petitioner was engaged through contractor to carry out work of board assigned to him. It was claimed that the petitioner was performing his duty under the overall supervision and control of contractor. It was denied that the employment shown through contractor is shame and nominal and there is violation of provisions of Section 9-A of the Act. It was also disputed that respondent board used to give intentional breaks to the petitioner whereas junior persons to the petitioner are continuously shown in the services. It was further denied that the petitioner has completed 240 days in each calendar year and prayed for dismissal of the petition.

4. Whereas, the respondent no. 2 did not choose to contest the claim of the petitioner and was proceeded against ex-parte vide order dated 22.03.2022.

5. Petitioner filed rejoinder in which he denied the preliminary objections and reiterated the averments as made in the statement of claim.

6. On the pleadings, this Court formulated the following issues on 07.04.2022

1. Whether the demands raised by the petitioner through union vide demand notice dated 20.04.2019 before the respondents to regularize the services of the petitioner from the date of the regularization of the services of his juniors and further his services shown through the contractor are legal and justified, as alleged? If so, what relief of service benefits the petitioner is entitled to? . . *OPP*.

2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . . *OPR*.

3. Relief

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. I have heard Ld. Counsel for the petitioner and Ld. Counsel for the respondent and have gone through the written submissions filed by the petitioner and respondent no.1.

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	:	No
Relief	:	Reference is answered in affirmative as per operative part of the Award.

REASONS FOR FINDINGS

Issue No.1

10. The onus to prove issue no.1 is on the petitioner.

11. Coming to evidence led by the petitioner, petitioner has stepped into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition. He also tendered in evidence demand notice Ex. PW-1/B, wages chart Mark-P1 and letter Mark-P2.

12. During cross-examination, he denied that he was working with the contractor Vishal. He deposed that he was paid salary by the respondent. He further deposed that he was engaged in the field for raising electricity polls on muster roll basis. He denied that he was engaged by the contractor through his firm universal training and research institute and his service was deployed with the respondent no. 1. He further denied that he worked on seasonal basis and thereafter abandoned his job. He further denied that he has not completed 240 working days in a calendar year.

13. Sh. Shiv Raj appeared into the witness box as PW-2. He deposed that muster rolls prior to 2000 are not traceable. He placed on record muster roll Ex. PW-2/A 2695 and Ex. PW-2/B 2697. The name of the petitioner has been recorded. He further deposed that muster roll no. 1955, 1956, 1957, 1162, 2104, 2280, 2373, 2393, 2398, 2402, 2516, 2518, 2522, 2523, 2526, 2527, 2534, 2535, 2540, 2539, 2695, 2697, 2710, 2711, 2712, 2713, 2714, 2715, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883 are issued to electric sub division HPSEBL Kandaghat w.e.f. December, 1996 to August, 2002. No complaint or FIR has been lodged regarding lost muster rolls. Working days of the petitioner have been shown vide letter Mark-2 and wages chart Mark- P1 now Ex. PW-2/D. Petitioner is still working with the department.

14. During cross-examination, he admitted that Sh. Chander Singh s/o Sh. Shiv Ram, r/o Village Shilli, P.O. Jhanedghat, Tehsil Kandaghat, District Solan and Sh. Chander Singh s/o Sh. Roop Ram, r/o Village Baran, P.O. Dharot, Tehsil & District Solan, H.P., are two different and separate persons. The department used to make payment to the contractor and petitioner was engaged by the contractor and not by the respondent.

15. This is the entire evidence led by the petitioner.

16. In order to rebut, the evidence of the petitioner, respondent examined Sh. Shiv Raj, as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also placed on record mandays chart Ex. R-1.

17. During cross-examination, he admitted that the petitioner was engaged with the board in the year 1996 and he worked continuously till August 2002. He was engaged on muster roll on daily wage basis and wages were paid to him by the board. He admitted that petitioner is still working with the board but claimed that he was engaged through respondent no. 2 since 2014. He admitted that no notice was given to the petitioner that his services were engaged through contractor in the year 2014. Petitioner is working under the direction of the board since 2014. He further deposed that neither any license/ registration certificate to engage a labourer on contract nor the agreement between the respondents has been placed on record. He admitted that no notice was issued to the petitioner to resume his duties, he also admitted that the no show cause notice or charge sheet has been issued to the petitioner. He further admitted that petitioner is working with the respondent board since 1996 continuously. He also admitted that petitioner is working on a

regular basis. He further admitted that the other workers working with the petitioner and thereafter, were regularized. Self stated that services of these workers are regularized on the basis of ITI diploma. He admitted that petitioner has completed the required services for regularization but stated that it is for the board to regularize the services of the petitioner. He admitted that no worker of the contractor sits at Chail Office.

18. This is the entire evidence led by the respondent.

19. So far as the case of the petitioner is concerned, the petitioner was engaged by the respondent as Beldar in the year 1996. It is the case of the petitioner that without any notice the services of the petitioner have been shown to be engaged through the contractor namely Vishal. Further claim of the petitioner is that he had worked for almost more than 22 years with the respondent borad but his services have not been regularized whereas the services of his junior persons namely Udam Singh, Pawan and others have been regularized as such he claimed that his services be also regularized from the date when the services of junior persons to him have been regularized. Whereas, the respondent on the other hand has denied that the petitioner was engaged as Beldar in the year 1996 and he worked continuously as such till December, 2001. It was claimed that the petitioner was working as a Laborer with HPSEB Ltd. Sub Division Kandaghat through contractor and he worked on muster roll basis for some days during the period from 1996 to 2001 and thereafter, the petitioner was called as and when his services were required by the respondent. The petitioner was engaged as casual/temporary worker on muster roll through contractor and he never remained in the employment of HPSEB Ltd. Now, if the evidence of the parties is seen the witness of the respondent who appeared as PW-2 and also as RW-1 has deposed that the name of the petitioner has been recorded in the muster roll Ex. PW-2/A to Ex. PW-2/D. The claim of the petitioner has been admitted by RW-1. During cross-examination, has admitted in unequivocal terms that the petitioner was engaged by the board in the year 1996. The wages chart produced by the respondent Ex. PW-2/D shows that the petitioner was working on muster roll with the respondent in the year 1996. PW-2 also examined as RW-1, has stated that the muster rolls prior to year 2000 have been lost however, no complaint or FIR in this regard have been registered. It is evident from EX. PW-2/D that in the year 2001 petitioner had worked for 245 days in total whereas in the year 2002 he had also worked for about 242 days. The respondent has not brought any muster roll or mandays chart thereafter to contradict the version of the petitioner that he had worked with the respondents ever after 2002. Though, the plea has been taken by the respondent no.1 that after 2014 he was engaged through respondent no. 2 as is evident from the statement of RW-1, but before putting the services of the petitioner through contractor i.e respondent no. 2, no notice was given to the petitioner nor his consent was taken. It would be appropriate at this stage to go through the provisions of Section 9-A, which reads as under "

"9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

20. Thus, it is clear from bare reading of Section 9-A**,** no employer, who proposes to effect any change in the conditions of service applicable to any workman, without giving a notice in the prescribed manner of the nature of change proposed to be effected.

21. Now, adverting to Fourth Schedule, which reads as under:

"THE FOURTH SCHEDULE

(See section 9A)

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN :

1. **Wages, including the period and mode of payment;**

2. **Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;**

3. **Compensatory and other allowances;**

4. **Hours of work and rest intervals;**

5. **Leave with wages and holidays;**

6. **Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;**

7. **Classification by grades;**

8. **Withdrawal of any customary concession or privilege or change in usage;**

9. **Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;**

10. **Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;**

11. **Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, 1 [not occasioned by circumstances over which the employer has no control."**

22. Thus, it is amply clear from Fourth Schedule that in case any change in wages including the period and mode of payment and withdrawal of customary concession or privilege or change in usage, introduction of new rules of discipline, increase or reduction in the number of persons employed, are some of the condition out line in the fourth schedule. It required prior notice under Section 9-A, which has totally been ignored by the respondent while putting the services of the petitioner with respondent no. 2.

23. Though, the stand of the respondent No.1 (board) is that the petitioner was engaged through respondent no. 2 and he was a contractual employee but the respondent no.1 not bothered to produce any such contract executed between the respondents. In the absence of any agreement between respondents, it is difficult to presume that the services of the petitioner were engaged by respondent no.1 through respondent no.2 nor respondents have produced any license under the Contract Labour (Regularization and Abolition) Act, 1970. There is no whisper in the pleading of the respondent no.1 nor any evidence has been led that initially at which time period the first agreement between the respondents took place to show that the services of the petitioner were engaged through respondent no. 2. No worker register, wages register and attendance register maintained by the contractor has been produced on record by the respondent no.1, in this regard. From the statement of RW-1, it stands established on record that the petitioner was on the rolls of

respondent no. 1 and without the consent of the petitioner and without any notice to him, his services were illegally shown to be engaged through contractor.

24. Since, the witness of the respondent no.1 has admitted that petitioner was in continuous services with the respondent no.1 since 1996 and thereafter he was shown to be engaged through contractor since 2014 without serving any notice of the aforesaid change in terms of Section 9-A of the Act and that too without taking his consent, such act on the part of respondent no. 1 is arbitrary and illegal and against the mandatory provision of the Act.

25. It is further, the case of the petitioner that the services of his junior persons namely Udham Singh and Pawan have been regularized. The respondent no.1 has denied this fact and has taken the specific stand that since the petitioner was employed through the contractor, the question of regularization does not raise. However, in view of the discussion above, it clearly stands established that the services of the petitioner were illegally shown to be engaged through contractor and it has come in the statement of RW-1 that the petitioner is regular worker of respondent no. 1 since 1996 and his services were not regularized whereas the services of other co-worker have been regularized.

26. Keeping in view my aforesaid discussion, it is held that the petitioner is employee of respondent no.1 since the date of his initial engagement and is in continuous service. His services have been illegally shown to be engaged through contractor w.e.f. 2014. The petitioner is held entitled for regularization as per the Policy of State Government issued for regularization of daily wage workers from time to time from the date when junior persons to him were regularized. In view of the discussion made hereinabove the issue no. 1 decided in favour of the petitioner.

Issue No.2

27. Now coming to issue no. 2, there is nothing on record that as to how this petition is not maintainable. The present reference petition has been sent to this Court by the appropriate Government for adjudication and the same is maintainable before this Court. Hence, issue no. 2 decided against the respondent.

Relief

28. In view of my aforesaid discussion, the claim filed by the petitioner succeeds and is hereby allowed. The respondent no.1 (Board) is directed to consider the case of the petitioner in terms of the Policy of State Government issued for regularization of daily wage workers from time to time and his services be regularized from the date when junior persons of the petitioner are regularized. Petitioner is not entitled to any back wages however he shall be entitled to all the service benefits as are admissible to the regular employees of the respondent Board.

29. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be consigned to records.

Announced in the open Court today on this 22nd day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

BEFORE ANUJA SOOD, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 63 of 2024

Instituted on : 14.08.2024

Decided on : 23.10.2024

Gulshan s/o Sh. Chaman Lal, Village & P.O. Ghanoli, Tehsil & District Ropar, PB.
. . *Petitioner*.

Versus

The factory Manager, M/s Theon Pharmaceuticals Ltd. Village Sainimajra, Tehsil Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Gulshan s/o Sh. Chaman Lal, Village & P.O. Ghanoli, Tehsil & District Ropar, PB by the factory Manager, M/S Theon Pharmaceuticals Ltd Village Sainimajra, Tehsil Nalagarh, District Solan, H.P. w.e.f. 01.01.2023 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. The case was listed for appearance of the parties for today but, neither the parties nor any counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner and respondent had remained *ex parte.*

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"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."

5. Rule 22 reads thus:—

"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."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"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."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the parties nor their counsels had put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 01.01.2023 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No. : 24 of 2020

Instituted on : 22.02.2020

Decided on : 23.10.2024

Ajay Kumar s/o Sh. Ravinder Kumar, V.P.O. Trilokpur, Tehsil Jawali, District Kangra, H.P. . . *Petitioner*.

Versus

The Factory Manager, M/s Loreal India Pvt. Ltd. Plot No. 146A-150, EPIP Phase-I, Jharmajri, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Ajeet Singh Saklani, Advocate

For the respondent : Shri Rajeev Sharma, Advocate

AWARD

The following reference was received for adjudication from the appropriate Government:

"**Whether the termination of the services of Sh. Ajay Kumar s/o Sh. Ravinder Kumar, V.P.O. Trilokpur, Tehsil Jawali, District Kangra, H.P. by the Factory Manager, M/s Loreal India Pvt. Ltd. Plot No. 146A-150, EPIP Phase-I, Jharmajri, District Solan, H.P. *w.e.f.* 31.05.2019 without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer?"**

2. The facts which emerges from the statement of claim are that the petitioner was appointed as trainee vide letter dated 07.11.2013 initially for a period of one year on monthly remuneration of ₹ 9321/-. After successful completion of training period, the petitioner was given appointment vide letter dated 4.11.2014 and he confirmed in service vide letter dated 4.5.2015. The petitioner was discharging his duties to the best of his capacity and with due diligence, however, it is alleged that on 10.12.2018 a batch of CN#3, 16 WB1812026816, batch size 3Ton was rejected and an investigation was carried out by one Shri Sanjeev Kumar in which allegations were made against the petitioner of lapses in quality procedure and a chargesheet dated 17.12.2018 was issued to the petitioner alleging therein that while working in the factory on 10.12.2018, petitioner did not follow the procedure and without scanning supplied the raw material due to which aforementioned batch was rejected. The notice was served vide forwarding letter dated 25.12.2018. Vide letter dated 3.12.2018, the respondent company appointed one Shri Hardesh Sharma, Advocate and vide letter dated 31.12.2018, the petitioner submitted that he has given the explanation and apology. Vide letter dated 3.1.2019, the petitioner submitted that his colleagues are not ready to depose in his favour due to fear of losing their job and he had made a complaint to the Labour Officer regarding the fact that the respondent company was pressurizing him to resign from the job and in this context a letter was sent by the Labour Officer, Baddi to the respondent company on 3.1.2019

to appear before him on 11.1.2019 at 11:00 AM. Respondent sent letters dated 4.1.2019 and 21.1.2019 to the petitioner thereby asking him to participate in the domestic enquiry. Respondent appointed Shri Hardesh Sharma, Advocate as an enquiry officer vide letter dated 21.1.2019, who asked the petitioner to appear for enquiry on 6.2.2019 at 3:00 PM in the respondent factory. Though, the petitioner was assisting in the enquiry but the respondent company got issued various communications to the petitioner showing as if the petitioner was not assisting in the enquiry such letter is dated 5.2.2019. The fact of the matter is that the petitioner was participating in the enquiry as is evident from copies of proceedings dated 6.2.2019 wherein the attendance of the petitioner was marked. On 19.2.2019, 6.3.2019 and 12.3.2019, the petitioner had appeared before the enquiry officer on which dates statements of witnesses appearing on behalf of the respondent management were recorded and on 26.3.2019, the statement of petitioner was recorded in which he has stated that on the date in question, he was suffering the cold and due to which he could not feel the smell of the material and further due to other shortcomings i.e non-availability of dustbin for keeping the excess material and due to supply of wrong material by one Leela Bahadur, incident had happened and further the scanners were also not in working condition. After the conclusion of the domestic enquiry by the enquiry officer vide letter dated 4.5.2019, respondent issued 2nd show cause notice along-with proposed penalty of dismissal from service to the petitioner and asked for written explanation. A copy of enquiry report was also enclosed. However, since the complete documents were not sent by the management of the respondent vide letter dated 16.5.2019, second copy of 2nd show cause notice along-with proposed penalty was sent to the petitioner and thereafter vide letter dated 31.5.2019, the services of the petitioner were terminated without waiting for his reply. Vide letter dated 13.6.2019, the petitioner requested the respondent for his reengagement/reinstatement in service. *Vide* letter dated 17.6.2019, the petitioner sent demand notice to the respondent company thereby requesting them to reinstate him in service with all consequential benefits including back-wages. When nothing was done by the respondent company, petitioner sent another communication dated 8.6.2019 (might be 18.6.2019) thereby submitting his objections to the enquiry report dated 10.4.2019 by mentioning that the management undue pressure upon the petitioner and threatened him with the consequences of losing job. It is further submitted in the said communication that before terminating the services of the petitioner no person hearing was given and principles of natural justice were not complied with. Petitioner again sent a communication to the respondent management thereby submitting objections regarding the fact that an outsider was appointed as an enquiry officer and requested for his reinstatement, but the respondent management did not pay any heed to his request. Vide communication dated 8.1.2020, the Joint Labour Commissioner referred the dispute to this Court. It is alleged that the respondent management has committed a serious procedural lapse while conducting enquiry as Shri Hardesh Sharma, Advocate was engaged as an enquiry officer by the respondent management as such by no stretch of imagination, it can be said that a person engaged/appointed by the respondent management would conduct a fair enquiry, hence, the very genesis of the proceedings against the petitioner is the result of illegalities and irregularities. A fair chance to defend himself was not given to the petitioner and the petitioner had stated in many communications that no colleague is cooperating with him and complete documents have not been supplied to the petitioner which caused grave prejudice to the right of the petitioner. The penalty of termination from service is a major penalty which has been imposed without conducting proper enquiry. The petitioner further alleged that there is no provision for appointed an outsider to conduct enquiry and a person who has been engaged by the respondent management cannot be expected to conduct a fair enquiry and even it is not the petitioner whose responsibility is there rather it is the collective fault of the person who supplied wrong raw material, superiors who did not check the scanner and asked him to manually enter the raw material, but the petitioner has been made a scapegoat by the superiors to save their skin. Petitioner prayed that the respondent be directed to reinstate him in service with all the consequential service benefits.

3. Notice of this claim was sent to the respondent, in pursuance thereof respondent contested the claim by filing reply wherein apart from taking preliminary objections of

maintainability, the petitioner has not come to the Court with clean hands, the present reference is not legal reference an additional plea was also taken that the petitioner was indulged into grave misconduct during the course of his employment and the respondent management held an independent, fair and impartial enquiry into the misconduct of the petitioner by an independent person. The enquiry officer held the enquiry as per the certified standing orders as applicable to the workers of respondent company and as per the principles of natural justice. Enquiry officer afforded full opportunities to the petitioner to attend the enquiry proceedings and he also explained the procedure regarding conducting the enquiry to the petitioner as well as management representative and thereafter due opportunities of being heard were afforded to both the parties. If this Court at any point of time comes to the conclusion that at any point of time comes to the conclusion that the enquiry was not conducted by the respondent or by the enquiry officer in a rightful manner, in that event, the respondent reserves the right to prove the guilt of the petitioner before this Court by producing documentary as well as oral evidence in this regard in view of the law laid down by the Hon'ble Supreme Court of India in case titled as **Cooper Engineering Ltd., *Vs.* Shri P.P Mundhe decided on 20.8.1975, 1975 AIR 1900**. On merits, it was admitted that the petitioner was engaged as trainee officer and his services were confirmed on 4.5.2015. It was also admitted that the batch of CN#3, 16 WB1812026816, batch size 3T was spoiled due to the wrongs of the petitioner and chargesheet dated 17.12.2018 was served upon him in this regard. Shri Sanjeev Kumar is working with the respondent as Manager (Production) in packing department, who conducted the enquiry and found that the petitioner did the wrong as per the charges levelled against him. The wrong committed by the petitioner was duly accepted by him which is also corroborated with the CCTV footage. Petitioner did not perform his job with responsibility which resulted in huge damage and the respondent suffered a loss of ₹ 6,00,000/-. After the enquiry was conducted, enquiry officer submitted the enquiry report and thereafter 2nd show cause notice was issued to the petitioner and only thereafter dismissal order as per law was passed by the respondent. A legal and valid enquiry has been conducted against the petitioner. It was averred that if the petitioner has followed the SOP while discharging his duties, this incident would not happen, but the petitioner failed to discharge his duties as per SOP which was the main reason of this happening in which the respondent suffered huge loss and material was not dispatched to the location timely. Petitioner did not mention anything in reply to the 2nd show cause notice issued by the respondent. The enquiry officer had given due notice of enquiry to the petitioner and the petitioner participated in enquiry. The enquiry proceedings placed on record clearly shows that all the documents i.e chargesheet, statement of witness and copies of proceedings were supplied to the petitioner. Petitioner was given full opportunities to lead his evidence in defence and papers produced by the petitioner during enquiry were also exhibited on record. Petitioner had failed to explain the charges levelled against him in the chargesheet. It was averred that the enquiry officer was an independent person having no interest in the working of the respondent and even otherwise the enquiry proceedings are only preponderance of evidence and not as per the Evidence Act as of in Criminal Trial. Respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed.

5. Since, no request was made either of the parties to take up a preliminary issue with regard to fairness of enquiry, hence, the issues already framed vide order dated 28.02.2022, as follows, this Court is duty bound to decide all the issues which have been framed.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.05.2019 without complying with the provisions of the Industrial Disputes Act 1947 is illegal and unjustified? As alleged? . . *OPP*.

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

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

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

5. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. I have heard the Ld. Counsel for the parties and have also gone through the record of the case carefully.

8. 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 : Entitled to reinstatement with seniority and continuity but without any back-wages.

Issue No. 3 : No

Issue No. 4 : No

Relief : Reference is partly answered in affirmative as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

9. Being interlinked and correlated both these issues are taken up together for discussion and decision as the same are intermingled and are to be disposed off on priority basis.

10. The onus to prove issues no.1 & 2 is on the petitioner.

11. Coming to evidence led by the petitioner, petitioner has stepped into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition.

12. During cross-examination, he admitted that he was served with chargesheet and that he filed reply by tendering apology that he was suffering from cold and influenza. He admitted the mistake on his part. Self-stated that it was not intentional and wilful. He admitted that due to his mistake the company had suffered loss of ₹ six lakhs and the entire batch was spoiled. He also admitted that the enquiry report was against him and he joined the enquiry proceedings. He admitted that he was afforded opportunity to cross-examine the witnesses. Self-stated that he was not allowed to avail the opportunity of defence assistance but admitted that he was asked to engage any co-worker as defence assistant. He also admitted that there was CCTV camera at their working place. He admitted that the liquid was kept inside the drums having labels. Self-stated that there was two drums of same colour. He denied that after pouring liquid from one drum, wrongly it was

mixed with another drum. He admitted that proper training was given to him and that he was working at same place for last 5-6 years. He also admitted that label is to be checked from the scanner. Self-stated that scanner was not in working order. He admitted that the respondent is a multinational company having strength of 150-200 workers. He also admitted that he had poured batch No. WB1812026816 in Batch No. CN#3.16 and in place of material no. 45009 the material no. 52281 had been mixed. He denied that the mistake on his part was not pardonable. He stated that the enquiry report along-with 2nd show cause notice was served on him. He denied that the termination of his services was proportionate to the major misconduct on his part.

13. This is the entire evidence led by the petitioner.

14. In rebuttal, the respondent has examined Shri Hardesh Sharma, Enquiry Officer, as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A. He also tendered in evidence enquiry proceedings as Ex. RW-1/B (28 pages) and enquiry report as Ex. RW-1/C (14 pages). While filing the affidavit Ex. RW-1/A, he reiterated the stand as taken by the respondent that he was appointed as an enquiry officer to conduct domestic enquiry in the chargesheet issued to the petitioner by the respondent for major misconduct as per model standing orders of the respondent company. He deposed that he had issued notice in writing to the petitioner to join enquiry proceedings which were to be conducted in the factory premises of the respondent. Enquiry was conducted as per model standing orders and principles of natural justice. The procedure of enquiry was explained in total to the petitioner and management representative. The petitioner participated in the enquiry and he was provided full opportunity to cross-examine the witnesses of the management and to lead his evidence in defence. After enquiry, he prepared the enquiry report which is written and signed by him.

15. During cross-examination, he admitted that he was appointed as an enquiry officer by the respondent company. He admitted that he was being paid salary for it. He denied that he did not record the version of the petitioner nor allowed him to defend his case properly and further denied that he violated the principles of natural justice. He admitted that Shri Rajeev Sharma, Advocate appearing for respondent company is his father. He admitted that enquiry proceedings and record were prepared in Hindi vernacular which were typed by him. He denied that the entire enquiry proceedings, report and statement of witnesses were typed by the management employee which were signed by him lateron.

16. The other witness examined by the respondent is Ms. Sonita Nadda, Assistant General Manager HR of respondent company, who stepped into the witness box as RW-2 and led her evidence by way of affidavit Ex. RW-2/A, which is also a reproduction of the averments as made in the reply. She also placed on record chargesheet Ex. R-1, letter dated 31.12.2018 Ex. R-2, letter dated 4.1.2019 Ex. R-3, 2nd show cause notice Ex. R-4, reply of workers dated 8.5.2019 Ex. R-5, letter dated 16.5.2019 Ex. R-6, letter of petitioner dated 23.5.2019 Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9, reply dated 8.7.2019 Ex. R-10, reply to conciliation officer Ex. R-11 and letter dated 31.5.2019 Ex. R-12.

17. During cross-examination, she denied that no show cause notice was issued to the petitioner before chargesheeting him. She also denied that no 2nd show cause notice was issued to the petitioner before terminating his services. She admitted that the termination of the services of any employee is the last resort. She denied that the petitioner was chargesheeted on false and baseless allegations and that the petitioner was not indulged in any of the misconduct for which he was chargesheeted.

18. Shri Amay Kulkarni, Manager Production of respondent company appeared into the dock as RW-3, who led his evidence by way of affidavit Ex. RW-3/A wherein he deposed that he

was on leave on 10.12.2018 and in the evening Shri Sanjeev phoned him that the batch CN-3.16's viscosity is not as per the set norms and it seems that the raw material used in this batch is not proper. He deposed that he told Mr. Sanjeev to enquire into the matter and then file the detailed report and on enquiry it was found that the petitioner failed to perform his duties in responsible manner as per fixed procedure. A written complaint was filed by him against the petitioner as the petitioner failed to check the label of raw material through scanner and mixed the raw material and due to this wrong committed by the petitioner, the respondent suffered huge financial losses. He also deposed that the petitioner bypassed the SOP and failed to check the raw material label on the drum through the scanner. Petitioner was a skilled workers of the respondent having experience of 4 years at that time and can easily prevent this wrong. Since, the action of the respondent was totally wrong and was against the set procedure, he was chargesheeted as per model standing orders and when the reply filed by the petitioner was not found satisfactory domestic enquiry was conducted against him and an outside person Shri Hardesh Sharma, Advocate Nalagarh was appointed as an enquiry officer.

19. During cross-examination, he denied that Mr. Sanjeev Kumar did not intervene prior to the damage had taken place. He admitted that the raw material checking and verification was done through scanning machine. He denied that at that time scanning machine was not in working order. He admitted that there arises technical faults in the scanning machines, but self-stated that the operation remained stopped at that time. He denied that the batch was spoiled due to scanning machine and petitioner had no art and part in the alleged spoiled batch. He also denied that the management did not enquiry into the reason for the spoiled batch.

20. Shri Sanjeev Kumar, Assistant General Manager of the respondent company appeared into the witness box as RW-3 (it might be RW-4) who led his evidence by way of affidavit Ex. RW-3/A, wherein he reiterated the statement of RW-3 Shri Amay Kulkarni that he had received an information from quality department that batch no. CN3.16 shade of three tons failed on quality test which is not as per the set norms and it seems that the raw material used in this batch is not proper. He apprised this fact to Amay Kulkarni, who told him to enquire into the matter and then file the detail report and thereafter he filed the report that the petitioner failed to perform his job with responsibility through e-mail. He also placed on record the e-mail dated 11.12.2018 as Ex. RW-3/B.

21. During cross-examination, he denied that the root cause analysis of the spoiled batch was not done. He also denied that the scanners were not in working order on that day. He denied that the failed raw material/bulk can be re-used. He also denied that he asked the petitioner that there was delay in the line where he was working.

22. This is the entire evidence led by the respondent.

23. The respondent management has placed on record the entire proceedings of the enquiry starting from the charge sheet Ex R-1. So much so even day to day proceeding conducted by the enquiry officer have also been placed on record vide Ex. RW-1/B.

24. The learned counsel for the petitioner has argued that before starting the enquiry, the enquiry officer did not explain the procedure to the petitioner and also did not allow him for defence assistance nor enquiry officer did not allow the petitioner to put questions to the witness/es of the management which were rejected by the enquiry officer and he had not recorded the version of the petitioner. The enquiry has been conducted in utter violation of the principle of natural justice and against the provisions of certified standing order.

25. Per contra it is the case of the respondent that the enquiry has been conducted as per the principles of natural justice and the Certified Standing Orders and the petitioner has been

dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings day to day were signed by him and duly supplied to him and he also argue that if the statement of the petitioner in cross-examination is seen, he has also admitted the entire case of the respondent and stated that he had joined the enquiry proceeding and he was afforded ample opportunities to cross-examining the witness. His statement was also recorded by the inquiry officer and he was also given opportunity to lead defence evidence. He has also admitted that inquiry report and second show cause notice was served upon him. He also admitted that he was asked to engage any co-worker as defence assistance. Thus, it stand establish that the enquiry proceedings have been conducted in fair, just and impartial manner and no fault can be attributed on this count.

26. Thus, the deposition of the parties and the overwhelming documentary evidence on record, shows that all procedural safe cards had been deployed by the respondent while conducting the domestic enquiry against the petitioner. It is evident that the charge sheet Ex. R-1 was served to the petitioner by sending the same through the registered post and the copy of the same was handed over in presence of RW-2, but the petitioner has refused to accept the same along with suspension order. However, the petitioner has not disputed this fact that he had not received the charge sheet. Even assuming the charge sheet was not supplied to the petitioner the fact remains that it was handed-over to the petitioner. It is evident from the proceeding Ex. RW-1/B that the petitioner had received the charge sheet and he had also filed the reply to the same. Thus, it is clear that the petitioner had replied to the charge sheet as such he cannot take any plea that notice was not served upon him. The proceeding of enquiry starting from 21.01.2019 onward, shows that the petitioner has appeared on each and every day when the effected order were passed and it was also explained to the petitioner that domestic enquiry was conducted as per the model standing order. The petitioner had received the copies of all the proceedings on the day when he appeared and put his signature on the proceedings. Thus, it stands established on record that day to day proceedings were supplied to the petitioner as well as the management representative.

27. The learned counsel for the petitioner had contended that the enquiry is vitiated for non-furnishing of documents and more so on the demand having been made by the delinquent. In this behalf he placed reliance of the judgment of Hon'ble High Court of Orissa titled as **Management of State Bank of India *Vs.* Presiding Officer, Industrial Tribunal Orisa and Anr. (2014) LLR 1151**. It is no doubt trite that non-furnishing of documents tends to vitiate the enquiry but in the case in hand the petitioner had sought certain documents regarding which an objection has been raised by the presenting officer vis-a-vis its relevancy to the dispute. There is nothing on record to show that as to what documents were sought and as to what was the prejudice caused to the petitioner in this behalf. The copy of the Standing Orders was however made available to the petitioner on his asking as is clear from the enquiry proceedings on record. There is no specific averment as to what documents were sought.

28. The learned counsel also sought to impeach the veracity of the enquiry proceedings on the ground that the enquiry officer was biased as his father was the advisor/Advocate for the management. In this behalf he has placed reliance upon the judgment of Hon'ble High Court of Delhi titled as **Tajmehal Hotel *Vs.* Industrial Tribunal-1 Government of NCT of Delhi and Ors. (2015) LLR 1129**. To counter the aforesaid objection the learned counsel for the respondent placed reliance upon the judgment of the Hon'ble Supreme Court titled as **M/s Dalmia Dadri Cement Ltd. *Vs.* Shri Murari Lal Bikaneria (1970) 3 SCC 259 and South India Cashew Factories Workers Union *Vs.* Kerla State Cashew Development** to contend that conducting of an enquiry by an officer of the management also ipso facto does not vitiate the enquiry and merely because the enquiry officer was an Advocate and had on occasions being engaged by the management did not render him in competent to hold a domestic enquiry. In the case in hand the father of the enquiry officer (RW-2) was the labour law advisor of the company and even he had

been working as an enquiry officer with the company for a long time. Admittedly, in the case in hand no objection had been raised to the appointment of the enquiry officer and as held in **H.V Nirmala *Vs.* Karnatka State Financial Corporation (2008) 7 SCC 639** objection having not been raised to the appointment of an enquiry officer during the enquiry proceedings, the charged employee is deemed to have waived off the objection. Having participated in the enquiry proceedings without any demur whatsoever, witnesses having been cross-examined, the charged officer cannot now turn back and allege that prejudice has been caused by the reason of appointment of a legal officer as an enquiry officer. The same principle will apply in the case in hand. Even otherwise going by the ratio laid down by the Hon'ble Supreme Court discussed hereinabove it cannot be said that the appointment of RW-2 ipso facto is not sufficient to vitiate the entire enquiry.

29. The charges as levelled vide chargesheet against the petitioner are that the petitioner was indulged into grave misconduct during the course of his employment. The petitioner did not perform his job with responsibility which resulted in huge damage and the respondent suffered a loss of Rs. 6,00,000/-. The petitioner had failed to check the label of raw material through scanner and mixed the raw material due to which the respondent company suffered huge financial losses. Though, such allegations are duly proved on record during the domestic inquiry, however, it has come on record that prior to this incident there was no complaint against the petitioner. The petitioner was engaged in services *w.e.f.* 07.11.2013 and he worked with the respondent company continuously till 2018, when the charge sheet was served upon him and he was suspended. From 2013-2018 there was no complaint against the petitioner regarding any mismanagement or committed serious laps or any causing of loss to the company by any mode. It is evident from the record that this was the first mistake committed by the petitioner. There is nothing on record to remotely suggest as to what led the disciplinary authority to the imposition of the major or extreme penalty of dismissal. As per clause 27-A apart from dismissal there are other punishments provided even for major misconduct.

30. By now it is fairly well settled that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra *Vs.* State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. *Vs.* Hari Singh decided on 30.4.2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

31. The facts are discussed hereinabove clearly show that the proceeding conducted of the workman has not been considered by the disciplinary authority while imposing sentence. It is not the against the management that it was intentionally mistake committed by the petitioner, thus, mistake of mixing the raw material was bonofide to mistake but this fact has not waved with the disciplinary authority, what to say about the past conduct of the petitioner and other workmen. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

32. Thus, while holding that the respondent have conducted the domestic enquiry as per the provisions of the Act and as per the Model Standing Orders, however it is held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages is itself a punishment imposed upon the workman.

33. In view of the above discussion, the petitioner is held to be reinstated in service with seniority and continuity but without any back-wages. It is also held that two increments of the petitioner be withheld for his misconduct. Both these issues are decided accordingly.

Issue No. 3

34. So far as issue No. 3 is concerned, the respondent has not led any evidence to establish on record that as to how the present claim petition is not maintainable. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate government for adjudication. I find nothing wrong with this petition which is perfectly maintainable in the present form. The issue in question is answered in negative.

Issue No.4

35. So far as issue No. 4 is concerned, the respondent has not led any evidence to establish on record that as to how the petitioner has not approached this Court with clean hands and suppressed the material facts from this Court. In view of my findings on issues no. 1 & 2 above, the issue in question is answered in negative.

Relief

36. As a sequel the reference is partly allowed while holding that the respondents have conducted the enquiry in a fair manner and as per the provisions of the Act and the Certified Standing Orders, the penalty imposed by the respondent management is held to be disproportionate and is consequently quashed and set aside. The petitioner is ordered to be re-instated in service. He shall be entitled to seniority and continuity from the date of his dismissal, however, without any back-wages but his two increments shall be withheld as directed above.

34. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 23rd day of October, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, H.P.

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171002, the 7th February, 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, Industrial Tribunal-**cum-**Labour Court, Shimla,** on the website of the Printing & Stationery Department, Himachal Pradesh i.e**. "e-Gazette":—**

Sr. No.	Case No.	Petitioner	Respondent	Date of Award/ Orders
1.	App.160/2019	Sh. Devinder Sharma	Principal Eicher School, Parwanoo.	03-07-2024
2.	App. 05/2023	Sh. Pawan Kumar	Registrar Agarsen University	05-07-2024
3.	Ref. 07/2019	Smt. Krishna Devi	Project Director Agriculture Deptt., Solan.	22-07-2024
4.	App. 06/2023	Sh. Bhag Singh	Registrar, Agarsen Univerity	23-07-2024
5.	Ref.152/2022	Sh. Kishore Chand & Anr	Bhojia Dental College, Baddi	26-07-2024
6.	Ref.123/2019	Sh. Rahul Thakur	M.D. HPTDC Shimla & Anr	31-07-2024

By order,

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

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application No. : 160 of 2019

Instituted on : 12-12-2019

Decided on : 03-07-2024

Devinder Sharma s/o Shri Manmohan Sharma, r/o House No. 735/5, Ahata Murari Lal, Main Market, Kalka, District Panchkula, Haryana. …*Petitioner.*

VERSUS

Principal Eicher School Kamli (Parwanoo), Tehsil Kasauli, District Solan, H.P.
... *Respondent.*

Claim petition under Section 2-A of the Industrial Disputes Act, 1947.

For the petitioner : Shri Niranjan Verma, Advocate

For the respondent : Shri Abhinandan Thakur, Advocate

AWARD

The present claim petition has been filed by the petitioner directly before this Court under the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. The case as set up by the petitioner in the statement of claim is that he was appointed as Accountant in Feb., 2017 by the respondent on a monthly salary of ₹ 13,200/-. Petitioner worked to the entire satisfaction of the respondent, but his services were terminated by the respondent orally *w.e.f.* 02.05.2019 without assigning any lawful reasons. On 03.05.2019, petitioner sent e-mail to the respondent inquiring about the reasons for his termination which was replied by the respondent, in which the petitioner was asked to come to the office for full & final settlement on 23.05.2019, but due to serious illness of the father of the petitioner, he requested the respondent to come on 25.05.2019. Though, the petitioner remained present in the school on 25.05.2019 to 28.05.2019 but he was asked to come to the office on 29.05.2018 for full and final settlement. On which date the Principal, Shri Deen Dayal, Administrative Officer and Bheem Raj Garg were also present along-with some muscle men and the petitioner was told that he had misappropriated the funds. The petitioner asked the respondent to provide him daily day book and other records so that he could check and clarify the same, but he was not provided with the record as demanded by him. On the same day, the management obtained some writing forcefully with the help of muscle men on the paper and the petitioner was compelled to admit that he had to pay `3,00,000/- to the respondent school and he will return the same in installments. Again petitioner was called on 03.06.2019 in the office and he was threatened and assaulted by the respondent with the help of muscle men and his signatures were obtained on some stamp paper. Rupees 1,00,000/- and two blank cheques were also taken from him forcibly by the respondent and he was threatened with dire consequences to lodge criminal case against him. The respondent did not even pay the salary for the months April and May, 2019 to the petitioner. Demand notice was raised on 15.06.2019 before the Labour-cum-Conciliation Officer, Solan. The petitioner has claimed that he had completed 240 days in a calendar year, as such his services were terminated without complying with the provisions of the Act. Through this petition, the petitioner has prayed that the respondent be directed to reinstate his services along-with all the consequential service benefits. Further the respondent be also directed to refund ₹1,00,000/- which were taken from him forcibly and to return the documents on which the signatures of the petitioner were taken.

3. The respondent contested the claim of the petitioner by filing reply in which it took preliminary objections that the petitioner who was appointed as an Accountant, does not fall under the purview of the Act, suppression of material facts, maintainability and the present claim is counter blast to FIR lodged against the petitioner under Sections 420, 408 and 506 of Indian Penal Code and Complaints under Section 138 of Negotiable Instruments Act filed against the petitioner. On merits, it was submitted that the petitioner was appointed as an Accountant on contract basis for one year (subject to renewal after one year) on temporary basis on a monthly salary of ₹13,200/-. The petitioner was found guilty of misappropriating School funds. Since, the petitioner was a contractual employee on temporary basis his services were discontinued as his contract was not renewed by the respondent. The Principal of Eicher School in reference to the internal audit by Mr. B.R Garg had constituted a committee of five persons for holding enquiry against the petitioner which also found that the petitioner had misappropriated School funds. It was disputed by the respondent that the services of the petitioner were terminated in unlawful manner. The internal audit report shows misappropriation of ₹3,29,680/- which amount was further raised to ₹3,54,715/- when the audit was done by the external auditor. The petitioner was shown all the discrepancies in accounts statement prepared by him which amounted to misappropriation of funds, upon which the petitioner admitted his fault and also accepted his liabilities to repay the same to the School in presence of his father Shri Manmohan Sharma. In order to discharge his liability the

petitioner had paid a sum of ₹1,00,000/- in cash and had issued two account payee cheques of ₹1,00,000/- each in favour of the respondent, but both the cheques were dishonored as payment was stopped by the petitioner. The contract of the petitioner was not renewed due to his own acts and conduct. The completion of 240 days is of no help to the petitioner. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed.

5. On the pleadings, this Court formulated the following issues on 08.12.2021. Though, the same appears to be wrongly typed/numbered as 4, 5, 6, 4, 7 and 8 instead of 1 to 6 as such issues are re-numbered as 1 to 6 starting from beginning.

1. Whether the termination of the petitioner by the respondent w.e.f. 02.05.2019 in violation of the provisions of Industrial Disputes Act is illegal and unjustified? **(Wrongly numbered as 4)** **. .***OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? **(Wrongly numbered as 5)** **. .***OPP.*

3. Whether the petition is not maintainable in the present form as alleged? **(Wrongly numbered as 6)** **. .***OPR.*

4. Whether the petitioner has not come to the Court with clean hands, as alleged? **(Wrongly numbered as 4)** . .*OPR.*

5. Whether the services of the petitioner were terminated by holding just and proper domestic enquiry against him for misappropriation of funds of School fees, as alleged? **(Wrongly numbered as 7)** . .*OPR.*

6. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. I have heard the Learned Counsel for the parties and have also perused the records of the case carefully.

8. 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 : Not entitled to any relief

Issue No.3 : No

Issue No.4 : Yes

Issue No.5 : Redundant

Relief : Claim petition dismissed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO 1 and 2

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. To prove the averments as raised in the claim petition, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the claim petition. He also tendered in evidence copy of demand notice as Ex. PW-1/A and audit report as Mark PA.

11. During cross-examination he admitted that he was engaged as an accountant and further admitted that he was engaged on contract basis, but self-stated that after one year he worked as a regular employee. He deposed that no appointment letter was issued, however, his ESI and EPF contribution was deducted by the respondent. He admitted that he has not placed any document to show that he was a regular employee. He denied that he was only a contractual employee. He deposed that Shri Bhim Singh Garg was supervising his work, who was the auditor of the School. He denied that domestic enquiry was conducted against him on the basis of the report of the audit. He admitted that he had given in writing that there was misappropriation of ` three lakhs of School funds. Self-stated that such writing was obtained from him by putting unnecessary pressure. He denied that he had executed an affidavit regarding the mode of payment of misappropriated money, however, he admitted his as well as his father's signatures on the same. He also admitted that FIR No. 70-2019 under Sections 408, 420, 506 IPC was registered against him in Parwanoo. He showed ignorance that criminal case was pending in the Criminal Court, Kasauli and that a complaint under Section 138 of N.I Act regarding the bouncing of cheque is also pending against him at Kasauli. He denied that he is gainfully employed.

12. Second witness examined by the petitioner is Shri Satish Sharma, Accountant Eicher School Parwanoo, who appeared into the witness box as PW-2. While appearing into the witness box he produced on record audit reports for the financial year 2019-2020 as Ex. PW-2/A and for the year 2018-2019 as Ex. PW-2/B. This witness has not been cross-examined.

13. This is the entire evidence led by the petitioner.

14. In rebuttal, the respondent examined Shri Subhash Chand, Criminal Ahlmad, Ld. JMFC Kasauli as RW-1, who deposed that as per record the copy of FIR No. 70 of 2019 dated 20.06.2019 is Ex. RW-1/A which has culminated into the presentation of challan, registered in the Court vide RBT 37-2/22/2021 in case titled State of H.P Vs. Devinder Sharma, copy of final report Ex. RW-1/B, copies of complaints under Section 138 of N.I Act no. 118-3 of 2019 and 139-3 of 2019 titled as Deepak Singi Vs. Devinder Sharma are Ex. RW-1/C and Ex. RW-1/D.

15. During cross-examination, he admitted that all these cases are still pending in the Court and no cheque was presented in the name of School.

16. Other witness examined by the respondent is Shri Naresh Kumar, Administrative Officer of respondent School, who stepped into the witness box as RW-2 and tendered into evidence authority letter Ex. RW-1/A and his affidavit Ex. RW-2/B. He also tendered in evidence affidavit Mark RX-2/A, letter dated 27.04.2019 Ex. RW-2/C, report dated 30.04.2019 Ex. RW-2/D and external audit report Mark RX-2/B. Through affidavit Ex. RW-2/B, this witness has reiterated the stand as taken in the reply and reiterated that the petitioner was employed on contractual basis. Enquiry was held against the petitioner and it was found that he had misappropriated the School funds. The petitioner was asked to settle the accounts who executed affidavits depicting the mode of payment to be made by the petitioner and he also issued two cheques, but both the cheques when presented were dishonoured. FIR No. 70 of 2019 was registered against the petitioner and complaints under Section 138 of N.I Act have also been filed. He also reiterated that since the petitioner was a contractual employee, hence, the completion of 240 days is of no help to him.

17. During cross-examination, he admitted that the copy of contract has not been annexed with the reply. He denied that the petitioner was called in the School on 29.05.2019 by the School management for full and final settlement where signatures of the petitioner were obtained forcefully on the blank cheques and stamp papers with the help of muscle men. He further denied that two blank cheques and `1,00,000/- in cash were obtained forcefully from the petitioner. He also denied that as per external auditor's report PW-2/A, no bungling was found to be done by the petitioner. He admitted that there were five persons in the enquiry committee. He further admitted that the members of the committee included Shri Deen Dayal, Shri Amit Pal Sharma and Ms. Seema Sodhi for the member of School and Shri Naveen Gupta was parent representative and Shri Ival Thankappan was the management representative. He also admitted that in place of the petitioner one Shri Satish has been appointed. Self-stated that he has been appointed on contract basis.

18. This is the entire evidence led by the respondent.

19. Coming to the claim in hand, the petitioner has filed the present claim alleging therein that he was appointed as an Accountant in Feb., 2017 on a monthly salary of `13,200/- and he worked uptill 02.05.2019 when his services were orally terminated without assigning any reasons. The claim of the petitioner is that he was a regular employee with the respondent, but if the cross-examination of petitioner (PW-1) is seen, it is clear that he was engaged by the respondent on contractual basis. Though, he claimed that after one year he worked as a regular employee, but he admitted that no appointment letter in this regard was issued to him.

20. The claim of the respondent is that the petitioner was never engaged on regular basis rather he was engaged on contract basis and after the expire of contract, his contract of employment was not extended further, keeping in view his conduct and deeds. Admittedly, no appointment letter was given to the petitioner by the respondent nor any contract has been produced on record for the perusal of this Court to establish that the respondent was bound to either renew the contract of the petitioner for the next year or that petitioner was a regular employee of the respondent School. In absence of any relevant material on record, this Court cannot conclude and concur with the statement of the petitioner that he was a regular employee with the respondent, who had completed 240 days in a calendar year.

21. The respondent has emphatically denied that the services of the petitioner were terminated on 02.05.2019 rather respondent has taken a plea that the contract of the petitioner came to an end.

22. Petitioner though has made a statement in the claim that he was called by the respondent to make his full & final payment vide email dated 03.05.2019, but such email has not been produced on record in accordance with law.

23. Though, with the evidence, as available on record, it stands established that the petitioner was a workman as he was not doing any supervisory or managerial work, but he was required to prove that he was in regular service, which he has miserably failed to prove on record. He has admitted that he was appointed on contractual basis but claimed that after one year his services were regularized. No appointment letter was produced on record. The onus to prove that he was a regular employee and that he had completed 240 working days was on the petitioner which he has failed to discharge. In **Municipal Corporation, Faridabad** *v.* **Siri Niwas (2004 (8) SCC 195),** it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In **M.P. Electricity Board** *v.* **Hariram (2004 (8) SCC 246)** the position was again reiterated in paragraph 11 as follows:

> **"The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad *v.* Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the nonproduction of certain relevant documents. This is what this Court had to say in that regard:**
>
> > **"A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."**

In **Manager, Reserve Bank of India, Bangalore** *v.* **S. Mani and Ors. (2005(5) SCC 100)** a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In **Batala Cooperative Sugar Mills Ltd.** *v.* **Sowaran Singh (2005 (7) Supreme 165)** it was held as follows:

"So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman."

With evidence as available on record, it stands established on record that the petitioner was engaged on contractual basis.

24. The claim of the respondent is that the petitioner has suppressed the material facts from this Court and had not disclosed that an FIR under Sections 420, 408 and 506 of IPC has been registered against him at P.S. Parwanoo and complaints under Section 138 of N.O Act has filed against the petitioner in the Court of Ld. JMFC, Kasauli by the respondent School. It is the claim of the respondent that the petitioner was a contractual employee engaged on temporary basis and his contract was not renewed as the respondent had lost faith and confidence in the petitioner, as petitioner had misappropriated the funds of the School and internal audit was also got conducted by a committee of five persons holding enquiry against the petitioner and they had found that the petitioner had misappropriated School funds. In this regard FIR No. 70 of 2019 was registered at PS Parwanoo and the petitioner had admitted his fault and also accepted his liabilities and thus paid ` one lakh in cash and issued two account payee cheques in the sum of `one lakh each drawn on HDFC Bank. However, these cheques have not been honoured as the petitioner had stopped the payment of these cheques. The statement of Shri Subhash Chand (RW-1), who was working as Criminal Ahlmad in Ld. JMFC, Kasauli also establishes on record these facts that FIR No. 70 of 2019 Ex. RW-1/A which has been culminated into the presentation of Challan was registered against the petitioner and apart from that two complaints under N.I Act, titled as Deepak Singi Vs. Devinder Sharma were pending and copies of the complaints were produced on record as Ex. RW-1/C and Ex. RW-1/D. The petitioner though has claimed that he was forced to sign the documents and to deposit `one lakh as well as to issue two cheques, but there is only a bald statement of the petitioner to prove such fact. The internal inquiry was also conducted and during cross-examination of RW-2 suggestion was put to this witness that as per enquiry committee report Ex.RW-2/C there were five persons in the committee which includes Shri Deen Dayal, Sh. Amit Pal Sharma and Ms. Seema Sodhi for the member of School, Shri Naveen Gupta was parent representative and Shri Ivan Thankappan was management representative. Petitioner has also admitted his signatures on affidavit Mark RX-2/A during his cross-examination, but has taken the plea that the stamp paper was not purchased by him. So far as statement of PW-1 is concerned, he himself has admitted that there was misappropriation of ` three lakhs in the School funds and affidavit Mark RX-2/A bears his signatures whereby he had admitted his mistake and undertook to pay amount of ` one lakh in cash and ` two lakhs through cheques in the sum of ` one lakhs each. The complaints Ex. RW-1/C and Ex. RW-1/D also corroborates the contents of affidavit Mark RX-2/A that two cheques were issued by the petitioner to Shri Deepak Singi, Principal of the Eicher School, Parwanoo, Tehsil Kasauli, District Solan, HP. The enquiry committee was formed *vide* Ex. RW-2/C and the report of the committee is Ex. RW-2/D. There is no statement made in the claim that the petitioner was not associated in the enquiry or the principles of natural justice were not followed while conducting the enquiry.

25. Apart from that the petitioner has lost faith and trust of the management, hence it would not be appropriate to thrust him upon the management to reinstate him on the same post. Since the petitioner was appointed on contract basis his termination after expiry of the contract cannot be held to be illegal retrenchment from the service. Even, assuming that he had worked for 240 days continuously that would also not entitle him to claim that he was in regular service, as number of days does not apply to those workmen whose services are purely engaged on contractual basis, hence, the compliance of Section 25-F of the Act was not necessary. It would be beneficial to go through the provisions of Section 2-(oo) (bb) of the Act, which are as under:

"[(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)…….

(b)…….

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c)……"

26. Perusal of these provisions of Section 2(oo), makes it clear that the termination as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry cannot be considered as a retrenchment of a workman by the employer. In this case also the contract of employment came to an end and respondent cannot be directed to re-instate the petitioner.

27. In view of the discussion as made hereinabove, the petitioner is not entitled to any relief. The issues No.1 & 2 are answered in the negative and against the petitioner.

ISSUE NO. 3

28. So far as issue No.3 is concerned, the respondent have not led any evidence to establish on record that as to how the present claim petition is not maintainable. I find nothing wrong with this petition which is perfectly maintainable in the present form. The issue in question is answered in negative.

ISSUE NO. 4

29. Though, it was argued that the petitioner has not come to the Court with clean hands, admittedly, FIR No. 70 of 2019 was registered against the petitioner and he had put his signatures on affidavit Mark RX-2/A. He was well aware about the fact that to enquire the misappropriation of School funds a committee of five persons was constituted, who gave its report vide Ex. RW-2/D. but he did not made any averments in this regard while filing the claim. Thus, it can safely be concluded that the petitioner has not approached this Court with clean hands. Hence, issue in question in answered in favour of the respondent.

ISSUE NO. 5

30. Though, this Court has framed issue No.5 that *"whether the services of the petitioner were terminated by holding just and proper domestic enquiry against him for misappropriation of funds of School fees"* and the onus to prove the same has been put on the respondent, but the respondent in the reply has not taken this plea that the services of the petitioner were terminated in view of the report of the domestic enquiry. The claim of the respondent is that even the domestic enquiry was held which had also found some irregularities in the accounts maintained by the petitioner, but the services of the petitioner were not terminated in view of the domestic enquiry but were terminated due to the fact that contract of the petitioner came to an end and his contract was not renewed as the respondent had lost faith in the working of the petitioner. While determining issues No.1 & 2, above, this Court has already held that the engagement of the petitioner was on

contractual basis and his services were terminated after the completion of contract period as such in view of such findings on issues no.1 & 2, above, this issues becomes redundant.

RELIEF

31. In view of my findings on issues no.1 to 5, above, the claim filed by the petitioner fails and is hereby dismissed by holding that the petitioner is not entitled to any relief as claimed. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 3rd day of July, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

Pawan Versus Agarsen University
Application No. 05/2023

05-07-2024

Present: Petitioner in person with Sh. Dinesh Bhanot, Ld.
Csl. for the petitioner.
Auhtorized Officer Shri Pankay Nanglia, with Sh. Kulweer Chaudhary, Ld. Csl. for the respondent.

Conciliation tried. The parties have have arrived to a compromise in this matter in application file under Section 2(A) of Industrial Disputes Act, 1947 registered as Application No. 05/2023. As per the settlement arrived between the parties the authorized officer of respondent management Dr. Pankaj Nanglia has agreed to pay Rs. 36,000/- (Thirty Six Thousand only) as compensation to the petitioner as full and final settlement amount which is also acceptable to the petitioner. The statements of the parties in this regard have been recorded separately. The parties have been identified before me by their respective counsel.

In view of the statements made by the petitioner as well as authorized officer of the respondent, the matter stood amicably settled.

Since the matter stood amicable settled between the parties, the respondent is directed to pay lum sum compensation of Rs. 36,000/- to the petitioner towards his full and final settlement arising out of this present application which the respondent shall pay within 15 days from today.

The present application is answered accordingly. Statements of the parties shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
05-07-2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No : 07 of 2019

Instituted on : 01-01-2019

Decided on : 22-07-2024

Krishna Devi w/o Shri Gian Singh, r/o Village Ber, P.O. Chambaghat, Tehsil & District Solan, H.P. *...Petitioner.*

VERSUS

The Project Director, Agriculture Department, ATMA Solan, District Solan, H.P.
... Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For the petitioner : Shri Abhyendra Gupta, Advocate.

For the respondent : Shri Manoj Sharma, ADA.

AWARD

The following reference was received for adjudication from the appropriate Government:

> **"Whether the termination of the services of Smt. Krishna Devi w/o Shri Gian Singh, r/o Village Ber, P.O. Chambaghat, Tehsil & District Solan, H.P.** *w.e.f.* **30.01.2018 by the Project Director, Agriculture Department, ATMA Solan, District Solan, HP without complying with the provisions of Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. The case set up by the petitioner is that she was engaged as daily waged beldar under Project Director (Agriculture) Solan in March, 2014 and she was in continuous service up till Feb., 2018 when her services were dispensed with, in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). Petitioner had completed 240 days of service in each calendar year since the date of her engagement. It was obligatory on the part of the respondent to have comply with the provisions of the Act before her termination but neither any notice nor any compensation has been paid to the petitioner. Even if it is assumed that the petitioner was serving under the Project, then also the provisions of law could not be floated. Petitioner was not engaged for a specific period and no such terms were framed while engaging the petitioner on daily wages, hence, the retrenchment of the petitioner is bad in the eyes of law. It has been prayed that the respondent be ordered to reinstate the petitioner in service with all the benefits incidental thereof, such as full back-wages and seniority etc.

3. Respondent contested the claim by filing reply, wherein preliminary objection of maintainability and the petitioner has not completed 240 working days in any calendar year were taken. On merits, it was disputed that the petitioner was engaged as a daily waged beldar in the office of Project Director (Agriculture) Solan, District Solan. Rather it was claimed that she was engaged on bill basis *w.e.f.* 06.06.2014 to Feb., 2017 through the then Project Director ATMA Solan Shri Chaman Jeet Kapoor and worked from 9:30 AM to 1.00 PM later on petitioner had also worked on quotation basis *w.e.f.* 01.03.2017 to 30.01.2018 as per instruction issued to her vide letter No. SLN/ATMA/APU/2011-899 dated 01.03.2017. It was disputed that any person junior to the petitioner is still working in the office of Project Director (Agriculture) Solan. The Director of Agriculture has deputed one regular agriculture beldar Shri Dil Bahadur in the department through Deputy Director of Agriculture, Solan *vide* letter No. Agr. SLN(B)6-1/2002-Vol-II dated 12.01.2018 and prayed for the dismissal of the claim petition.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the claim petition were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.08.2019:

1. Whether the termination of the petitioner *w.e.f.* 30.01.2018 is violative of the provisions of the Industrial Disputes Act as alleged? If so, its effect thereto? ...*OPP.*
2. Whether the claim is not maintainable as the petitioner has not completed 240 days in any calendar year as alleged? If so, its effect thereto? . .*OPR.*
3. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. I have heard the Ld. Counsel for the petitioner (as well as gone through the written arguments submitted by the Ld. Counsel for the petitioner) and Ld. ADA for the respondent and have also gone through the record with care.

8. 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	:	Yes.
Relief	:	Reference is answered in negative as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

9. Both these issues are intermingled and inter-connected and require common appreciation of the evidence, as such both these issues are taken up together for the purpose of determination.

10. In support of his case, petitioner stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the claim petition.

11. During cross-examination, she admitted that initially she was engaged on bill basis from 06.06.2014 to Feb., 2017. She also admitted that she was engaged through the Project Director, ATMA, Solan Shri Chamanjeet Kapoor. She admitted that she was working from 9.00 AM to 1.00 PM, however, she denied that she was engaged thereafter *w.e.f.* 01.03.2017 to 30.01.2018 on quotation basis. She denied that she has not completed 240 days in a calendar year. She further denied that no junior to her was retained by the respondent.

12. This is the entire evidence led by the petitioner.

13. In order to rebut the case of the petitioner, respondent examined Shri Surinder Kumar Thakur, Project Director, ATMA, Solan as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence copy of statement showing the details of work done by the petitioner Ex. R-1, details of daily work done by the petitioner Ex. R-2, office order dated 12.01.2018 Ex. R-3, office order dated 19.01.2018 Ex. R-4 and quotations Ex. R-5.

14. During cross-examination, he admitted the suggestion put by the Ld. Counsel for the petitioner that the petitioner had worked on quotation basis from June, 2014 to Jan., 2018 continuously. Self-stated that the petitioner had availed the breaks to go to her native country Nepal. He denied that the appointment on quotation basis was made just to terminate the services of the petitioner. He denied that the petitioner was working from 9.00 AM to 4:00 PM. Permanent employee in place of the petitioner was engaged as per the Policy of the Government. The petitioner was engaged on bill/quotation basis and there was no change in service condition as such no notice was required to be served upon her. He admitted that no compensation was paid to the petitioner, but self-stated that the petitioner was engaged as part time on quotation basis. He further stated that there is no engagement on daily wage basis from 2014 to 2022, in the department.

15. This is the entire evidence led by the respondent.

16. So far as the claim of the petitioner is concerned, it is manifestly clear from record that the petitioner has asserted that she was engaged as daily waged beldar by the respondent w.e.f. March, 2014 to Feb., 2018 and in every calendar year she had completed 240 working days of service since the date of her engagement. The petitioner has though put up a claim that despite the fact that she was a daily waged beldar and had completed 240 working days in a calendar year, her services were terminated without issuing any notice and payment of compensation. On the other hand the respondent has taken the plea that the petitioner was engaged on bill basis w.e.f. 06.06.2014 till Feb., 2017 and thereafter her services have been taken on quotation basis w.e.f. 01.03.2017 to 30.01.2018. Merely completion of period of employment on temporary basis does not confer any right on the workman to claim re-instatement. No document has been produced on record by the petitioner to show that she was engaged as a daily waged beldar by the respondent nor copy of muster roll has been produced on record. It is well settled by now that burden of

proving this fact that she was engaged as daily wager beldar was heavily upon the petitioner, but she has miserably failed to prove this fact. On the other hand with the cross-examination of the petitioner it stands established that she was engaged on bill basis w.e.f. 06.06.2024 to Feb., 2017 and further the suggestion put to RW-1 by the Ld. Counsel for the petitioner proves on record that petitioner had worked on quotation basis from June, 2014 to Jan., 2018. The evidence on record is fortifying the stand taken by the respondent that the petitioner was firstly engaged on bill basis and thereafter she worked on quotation basis. Apart from that document Ex. R-5, which is comparative statement of different parties showing the rates for office cleaning etc. work in respect of Project Director, ATMA, Solan, also establishes on record that the petitioner had quoted rates of ` 2,000/- per month for that purpose. She had also applied for the said work along-with two other candidates namely Vimla Devi and Laxmi Devi and since the quotation of the petitioner was lowest, she was engaged on quotation basis. The petitioner had moved various applications which are annexed with Ex. R-5 quoting her rates and stating therein that she would not claim any other right from the department apart from her salary.

17. Though, much reliance was placed on Ex. R-1 by the Ld. Counsel for the petitioner and it was forcefully contended that this document clearly shows that the petitioner had worked for more than 240 days in a calendar year since 2014 to 2018, but this document shows the detail of work done by the petitioner. Though, it is not a disputed position of law that even a part time daily wager is entitled to the protection of the Act and cannot be terminated without complying with the provisions of Section 25-F of the Act, however, coming to the case in hand, the petitioner has failed to prove that she was a daily wager and had been engaged on muster roll basis. Rather, from the documents on record it stands established that the petitioner was engaged on bill basis and thereafter on quotation basis for a particular period as such she cannot claim that her services have been terminated illegally without complying with the provisions of Section 25-F of the Act.

18. So far as violation of Section 25-G is concerned, it has come in the evidence of RW-1 and is also evident from Ex. R-4 that Shri Dil Bahadur was working in the office of Assistant Seed Testing Officer, State Seed Testing Laboratory, Chambaghat Solan and was transferred to the respondent department vide Ex. R-3 and Ex. R-4 as such no violation of Section 25-G has been established. The petitioner has failed to prove on record employer-employee relationship and further that she was a daily wager with the respondent. The termination of the petitioner cannot be said to be violative of the provisions of the Act. Accordingly, issue no.1 is decided against the petitioner.

19. So far as issue No.2 is concerned, since the petitioner has failed to prove that she was a daily wager and further that she had completed 240 working days as daily wager in a calendar year and in view of my findings on issue No.1 (above), this issue is decided in favour of the respondent and answered in affirmative.

RELIEF

20. In view of my findings on issues no.1 & 2, above, the claim filed by the petitioner fails and is hereby dismissed by holding that the petitioner is not entitled to any relief as claimed. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the

appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 22nd day of July, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

Bhag Singh *Versus* Agarsen University
Application No. 06/2023

23.07.2024

Present: Proposed legal heir of Deceased namely Pawan & Harmesh are present in person with Sh. Dinesh Bhanot, Learned Counsel. The petitioners Pawan has also produced special Power of Attorney executed by other LR of Bhag Singh in his favour to persue or to compromise this case on behalf of the other LR's.

Auhtorized Officer Shri Pankay Nanglia, with Sh. Kulweer Chaudhary, Ld. Csl. for the respondent.

At this stage, application under Order 22 Rule 4 Read with Rule 9 and Section 151 of CPC has been filed to bring on record legal heirs of deceased Bhag Singh. Attested copy of Priwar Register has been produced by the petitioner, wherein Harmesh, Gurnam and Pawan are shown to be son's for Late Shri Bhag Singh, whereas Smt. Nirmla is shown to be wife of the deceased Bhag Singh. Learned Counsel for the non-applicant has given his no objection on the face of the application. In view of this, application under Order 22 Rule 4 Read with Rule 9 and Section 151 of CPC is allowed by the Court. LR's of deceased Bhag Singh namely Nirmla, Harmesh, Pawan and Gurnam are ordered to be brought on record. Memo of parties has been filed. Be taken on record. Application accordingly stands disposed off. Be tagged with the main case file after due completion.

Respondent has made offer to the petitioners for one time settlement and offered to pay a lum sum compensation of Rs. 50,000/- (Fifty Thousand only) to the petitioners, which is acceptable to the petitioners. As per the settlement arrived between the parties the authorized officer of respondent management Dr. Pankaj Nanglia has agreed to pay Rs. 50,000/- (Fifty Thousand only) as compensation to the petitioners as full and final settlement amount which is also acceptable to the petitioners which is to be disbursed to the petitioner in following manner:

Sr. No.	Name	Amount
1.	Smt. Nirmla	Rs. 20,000/-
2.	Pawan	Rs. 10,000/-
3.	Gurnam	Rs. 10,000/-
4.	Harmesh	Rs. 10,000/-

Statement of the petitioner Pawan has been recorded, vide which he has placed on record SPA as Ex. P/1. He has accepted Rs. 50,000/- as full and final settlement amount in this claim on behalf of the petitioners. He also stated that he has accepted cheque of Rs. 20,000/- on behalf of his Mother Smt. Nirmla also accepted a cheque of Rs. 10,000/- for himself. He further deposed that the respondent has agreed to pay Rs. 10,000/- to the petitioner Gurnam within 2 days, as such nothing survives in the present application.

Similar is the statement of petitioner Harmesh, who has also accepted cheque of Rs. 10,000/- as per his share in the full and final settlement of the claim.

The authorized officer of respondent management Dr. Pankaj Nanglia has placed on record his authority letter as Ex. R/1 and has undertaken to pay a sum of Rs. 10,000/- to Gurnam within 2 days.

In view of the statements made by the petitioners as well as authorized officer of the respondent, the matter stood amicably settled.

In view of the compromise the respondent is directed to honour the cheque(s) issued to Nirmla, Pawan & Harmesh and also to pay Rs. 10,000/- to Gurnam, within 2 days. In view of this statement nothing survived in this application.

The present application is answered accordingly. Statements of the parties shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
23.07.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

Vide separate office order, this case is being taken up today at Camp Court, Nalagrh

26.07.2024

Present: S/Shri Kishore Chand, President and Jasmer Singh, General Secretary of the workers union are present in person with Shri J.C. Bhardwaj, AR.

Shri Kanwal Verma, Superintendent of the respondent College in person with Shri Rajiv Sharma, Advocate.

Conciliation tried, and has succeeded in the matter. The reference under Section 10 (1) of the Industrial Disputes Act, 1947 received from the appropriate government *vide* notification no. 11-2/93(Lab)ID/2022-baddi/Bhojia, dated 23.03.2022 sent by Joint Labour Commissioner for adjudication, which was registered before this Court as reference No. 152/2022 stood amicably resolved between the parties. Respondent management has agreed that in addition to 5% increase in

the salary made by respondent management in September, 2023, the respondent management shall make 5% more increase in the salary of the workers of petitioner union *w.e.f.* April, 2024 in Reference no. 152 of 2022. The President as well as the General Secretary of the union have agreed to withdraw the other demands raised by them through this reference and have prayed that in view of the settlement made with the respondent management for the increase of 5% in the salary of the workers *w.e.f.* April, 2024, the reference sent by the appropriate Government may be disposed off accordingly and award be passed.

The statements of President and General Secretary of the petitioner union have been recorded to that effect and statement of Shri Rajiv Sharma, Advocate for respondent has also been recorded separately in this regard.

In view of the compromise as effected between the parties nothing survive in this petitioner. Thus, in terms of aforesaid compromise award is passed whereby the respondent management has agreed to increase the salary of the petitioner union by 5% *w.e.f.* April, 2024 in addition to the 5% increase made by the respondent management *w.e.f.* September, 2023. The other demands of the petitioner union stands withdrawn accordingly as per statement of Shri Kishore Chand, President and Shri Jasmer Singh, General Secretary.

The present reference is answered accordingly. The statement(s) of Ld. Counsel for the respondent as well as that of President and General Secretary of the petitioner union shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
26.07.2024

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

Vide separate office order, this case is being taken up today at Camp Court, Nalagrh

26.07.2024

Present: Petitioner in person.

Shri Rajiv Sharma, Advocate for respondent.

The petitioner has moved an application stating therein that she belongs to a poor family and having two minor children and her husband is also handicapped and she be provided Legal Aid Counsel in the present case.

The Reader of this Court is directed sent the application filed by the petitioner to the Ld. Senior Civil Judge, Nalagarh for passing appropriate orders on the application. Be next listed on 27.09.2024 at camp Court Nalagarh.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No : 123 of 2019

Instituted on : 23-08-2020

Decided on : 31-07-2024

Rahul Thakur s/o Shri Jagdish Chand, r/o Village Kuter, P.O. Bychari, Tehsil and District Shimla ...*Petitioner.*

VERSUS

1. The Managing Director, Himachal Pradesh Tourism Development Corporation Limited, Near Ritz, Shimla-171001, H.P.

2. The Manager/ Incharge of Himachal Pradesh Tourism Development Corporation Limited, Lift, Ritz Annexe, Shimla (HP). ... *Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For the petitioner : Shri Narender Sharma, Adv.

For the respondents : Shri Ranjeet Singh, Adv.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether the termination of the services of Sh. Rahul s/o Sh. Jagdish Chand, r/o Village Kuter, P.O. Bychari, Tehsil & District Shimla-171011 by (i) The Managing Director, Himachal Pradesh Tourism Development Corporation Ltd., Near Ritz, Shimla-1, H.P (ii) the Manager/ Incharge of Himachal Pradesh Tourism Development Corporation Ltd., Lift, Ritz Annexe, Shimla (HP) *w.e.f.* 01.09.2017 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. The case of the petitioner as emerges from the statement of claim is that the petitioner/ claimant was initially engaged on 04.05.2016 on contract basis as Utility worker in Himachal Pradesh Tourism Development Corporation Limited (hereinafter referred to as respondent corporation). The agreement was renewed and the petitioner worked till 30.08.2017, however, in the Month of September 2017, the services of the petitioner were terminated orally by the respondents without any rhyme and reason and in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). Though petitioner had completed more than 240 working days in the preceding calendar year from the date of his oral termination, but respondents neither served any mandatory notice to the petitioner nor paid any due wages before terminating him. Petitioner was engaged with other workers who are still continuing with the respondent whereas the petitioner has been discriminated and treated differently. During the pendency of conciliation proceedings petitioner was called by the respondent no. 1 vide

communication dated 06.07.2019 and re-engaged the petitioner and acknowledge his joining, but his services were taken on outsource basis. The respondents have illegally changed the condition of services of the petitioner as he was initially engaged on contract basis directly by the respondents but now he has been re-engaged on outsource basis, which is wrong and illegal. Petitioner remained unemployed *w.e.f.* 15.09.2017 and was not gainfully employed till 16.07.2019 when the respondents re-engaged the petitioner with the changed services conditions. Respondents Corporation is bound to pay full salary to the petitioner *w.e.f.* 15.09.2017 till his re-engagement. Apart from this, it was also prayed that the respondents be also burdened to pay litigation costs of Rs. 35,000/-.

3. Notice of this petition was sent to the respondents, in pursuance thereof respondents contested the petition by filing reply, in which they took preliminary objections such as petitioner is guilty of suppression of facts, petition is bad for mis-joinder and non-joinder of necessary parties, there is no relationship of employer and employee between the petitioner and respondents, claim of the petitioner is not maintainable, the disputes is not covered under the Act, estoppel and of cause of action. The petitioner entered into an agreement with the respondent and the conditions of such agreement were duly acceptable to both the parties. Since the services of petitioner were purely on seasonal basis, which automatically stood terminated when the work/season was over. Vide letter no. Admn/8-150-2010-TDC- vol-II dated 17.12.2013 Utility Workers, Sweepers and Specialized Cooks are to be engaged through outsource agencies *i.e.* M/s Corporate Care, New Shimla, HP. Since the petitioner was not on the rolls of HPTDC, he approached the outsource agency and he was provided work by the outsource agency as Utility worker from 29.05.2016 to 30.05.2016 as such in the Month of June, 2016 vide letter no. Admn/8-357/2018-TDC dated 06.07.2019 the petitioner has been re-engaged as Utility worker on outsource basis with HPTDC.

4. On merits, it was averred that the petitioner was initially engaged as seasonal worker through outsource agency in the Month of May and June, 2016 and thereafter in the Month of August, 2016 at Lift the Mall, Shimla for 89 days, purely on the seasonal basis, on the basis of agreement executed between the petitioner and respondent. It is denied that the petitioner has completed 240 working days in preceding calendar year from the date of his oral termination. It was denied that the services of the petitioner were terminated by the respondents on 15.09.2017 without following the mandatory provisions of the Act. It was claimed that the petitioner has no legal right and authority to file any demand notice before the Labour Inspector-cum-Conciliation Officer, Shimla. Respondents claimed that the petitioner had intentionally hidden this fact from the Court that he was working as Utility work on outsource basis with HPTDC, Lift Shimla, through outsource agency M/S Corporate Care New Shimla, H.P. Respondents reiterated that petitioner was initially appointed as seasonal worker for 89 days and thereafter he was engaged through outsource agency as such there was no requirement to follow the mandatory provisions of the Act. It was denied that during the conciliation proceedings the petitioner was called by the respondent No.1 vide communication dated 06.07.2019 and respondents acknowledge the joining of the petitioner. It was reiterated that the petitioner was not on the rolls of the HPTDC, as such his services were not hired by the respondents. It was disputed that the respondents are bound to pay full salary to the petitioner *w.e.f.* 15.09.2017 till his re-engagement and prayed for dismissal of the petitioner.

5. Petitioner filed rejoinder in which he denied the averments as made in the reply and reaffirmed those as made in the statement of claim.

6. On the pleadings, this Court formulated the following issues on 13.12.2021:—

1. Whether the termination of services of petitioner by the respondent *w.e.f.* 01.09.2017 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified, as alleged ? . .*OPP.*

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

3. Whether the claim petition is bad for non-joinder and mis-joinder of parties, as alleged? . .*OPR.*

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

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

6. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. I have heard Ld. Counsel for the petitioner and Ld. Counsel for the respondents.

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 : Entitled to re-instatement with seniority, continuity and regularization, but without back-wages.

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Relief : Reference is answered in affirmative as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

10. Being interlinked and correlated both these issues are taken up together for discussion and decision.

11. Coming to evidence led by the petitioner he has stepped into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition.

12. During cross-examination he deposed that he was engaged on 04.05.2016 on daily basis and denied that his engagement was purely on seasonal basis. He admitted that as per the agreement he was engaged for 89 days. He further deposed that in the year 2018-2019, he was engaged on contract on outsource basis. He admitted that outsource agency has not been impleaded as a party. He admitted that he is getting salary through the contractor. Self-stated that earlier he was paid salary by the respondent.

13. Shri Sanjeev Guleria working as Law Officer in HPTDC was examined as PW-2. He brought the requisitioned record i.e muster roll Ex. PW-2/A (pages 14), demand notice Ex. PW-2/B (pages 2), order dated 06.07.2019 Ex. PW-2/C (pages 2), engagement of other employees Ex. PW-2/D, officer order dated 27.01.2022 Ex. PW-2/E and order dated 25.08.2022 (pages 6), joining report Mark-PX2-1. This witness was not cross-examined by the respondents despite opportunity.

14. In rebuttal, the respondents have examined Shri Sanjeev Guleria as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A, which is also a reproduction of the averments as made in the reply.

15. During cross-examination, he admitted that the petitioner was engaged as Utility worker on daily wages on 04.05.2016 for a period of 89 days. He also admitted that one Shri Ricky was also engaged on daily wages on 07.05.2016 for a period of 89 days. The petitioner was paid wages @ Rs. 200/- per day. He showed ignorance that the petitioner was terminated from the services without complying with the provisions of the Act. He admitted that during conciliation proceedings managing director re-engaged the petitioner *vide* communication Ex. PW-1/C. He showed ignorance that the principles of first come last go have been violated by retaining Sh. Ricky in service. He admitted that the wages of the petitioner were paid by HPTDC before his termination and his EPF was also deducted by the HPTDC. He admitted that services of Shri Ricky have been regularized by the department vide Ex. PW-2/E on 27.01.2022. He admitted that Shri Ricky was junior to the petitioner in service. He also admitted that the service of the petitioner were not regularized.

16. This is the entire evidence led by the respondents.

17. The factual matrix of the case is that the petitioner raised an Industrial Disputes for wrong termination by approaching the Assistant Labour Commissioner, Shimla. Petitioner has taken the plea that he was appointed on contractual basis on 04.05.2016 and in the Month of September 2017, his services were terminated orally without assigning any reason and without following the mandatory provisions of the Act, despite the fact that the petitioner had completed 240 working days in the preceding calendar year from the date of his oral termination. Apart from this petitioner has also alleged gross violation of Section 25-G of the Act. The further claim of the petitioner is that his service conditions have been changed illegally despite the fact that he was engaged on contract basis directly by the respondents initially in the year 2016. Whereas now after his re-engagement by the respondents his services have been put under outsource.

18. Retrenchment under Section 2 (oo) of the Act, is comprehensive enough to include all types of terminations of service, unless the termination falls within any of the exceptional categories mentioned therein. In the instant case, it stand established on record from Ex. PW-2/A as well as statement of RW-1 Shri Sanjeev Guleria that the petitioner was engaged as utility worker on daily wages on 04.05.2016. It is evident from muster roll Ex. PW-2/A that the petitioner started working with the respondents on muster roll in the month of May, 2016 and he worked as such till August, 2017. These documents also established that he had completed more than 240 days in a calendar year proceeding to his oral termination by the respondents. In this case admittedly no action was initiated against the petitioner by way of any disciplinary action. This is the case of the respondents that work was of seasonal nature and when such work completed his services stood automatically terminated. But, this plea of the respondents cannot be taken into consideration as the respondents had retained the junior workman and terminated the services of the petitioner. If no work was available with the respondents, I fail to understand that for what work Shri Ricky who was junior to the petitioner, was retained. Under the provisions of 25 (F) of the Industrial Disputes Act, it was incumbent upon the respondents corporation to have issued one month notice in writing to the petitioner indicating the reasons for retrenchment or the petitioner was required to be paid

wages/ compensation in lieu of such notice. Coming to the case in hand neither any notice has issued to the petitioner nor he was paid wages/compensation in lieu thereof which is in utter violation to the provisions of Section 25(F) of the Act, as such oral termination of the petitioner from his services on 01.09.2017 is neither legal nor justified.

19. The second point which arises for consideration in this case is that there is not only violation of Section 25 (F) of the Industrial Disputes Act but there is also a gross violation of Section 25(G) of the Abid Act, which reads as follows:

> *"Where any workman in an industrial establishment, who is citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.*

20. For attracting the applicability of aforesaid provisions of law, the workman is not required to prove that he had worked for 240 days during twelve calendar months preceding the date of his termination. It is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason.

21. The petitioner has placed on record the document Ex. PW-2/D, which shows that one Sh. Ricky was initially engaged on 07.05.2016 to perform Class-IV job. The first agreement with this worker is of 07.05.2016 and the same was signed by General Manager on behalf of HPTDC. Whereas *vide* office order dated 27.01.2022 Ex. PW-2/E, the services of Sh. Ricky have been regularized with immediate effect. It has also come in the statement of RW-1 that petitioner was engaged on 04.05.2016 and he was senior to Sh. Ricky, in service who was also engaged by the respondent on contract basis and. Since, Sh. Ricky was junior to the petitioner and petitioner was engaged as utility worker on 04.05.2016, whereas Sh. Ricky was engaged on 07.05.2016 for the period of 89 days, but the respondents corporation decided to retained Sh. Ricky in service and his service was regularized vide Ex. PW-2/E, whereas respondents terminated the services of the petitioner, who was senior to Sh. Ricky. The principle of "first come last go or "last come first go" has been violated by the respondents while terminating the services of the petitioner. The respondents have retained the junior workman without any tangible reasons. The termination of the services of the petitioner in the aforesaid manner cannot be said to be just, fair and reasonable and is also against the basic principles of natural justice.

22. By now it is well settled that the termination of any employee in violation of Sections 25(F), 25(G) and 25(H) would fall within the domain of illegal "retrenchment". It is also evident from the record that during conciliation proceedings, the petitioner was re-engaged by the respondents department on 06.07.2019, but he was put under contractor and was termed as outsource employee. Though, the petitioner was re-engaged but his service conditions have been changed. No notice was given to the petitioner for change of his service conditions as required under Section 9-A of the Act, as such putting the services of the petitioner on outsource basis is also against the principles of natural justice. Ones it stands established on record that the petitioner was engaged as contractual employee by the respondents, his services conditions could not be changed without due notice. More so, when the person junior to the petitioner was retained and regularized. In view of above discussions, it stands established on record that termination of the petitioner was not legal and justified and was in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act, as such the petitioner is entitled to be reinstated along-with seniority, continuity and regularization in services.

23. So far as the re-engagement of the petitioner with full back-wages is concerned, it is well settled that the re-engagement of the workman with back-wages is not automatic. Moreover, in the case in hand the petitioner has not led convincing evidence to establish that from the date of his termination till his re-engagement by the respondents, he remained unemployed and he was not gainfully employed anywhere, as such the petitioner is not entitled to any back-wages. In view of the discussion made above since the petitioner has been able to establish on record that there is violation of mandatory provisions of the Act, he is entitled for re-engagement, as such his oral termination by respondent *w.e.f.* 01.09.2017 is liable to be set aside. The petitioner is entitled for re-engagement in service *w.e.f.* 01.09.2017 with seniority and continuity, but without back-wages. The petitioner is also entitled for regularization of his services from the date when the services of his junior workman Shri Ricky have been regularized. Accordingly, issue no.1 is decided in favour of the petitioner and issue No.2 is accordingly decided.

ISSUE NO. 3

24. That the respondent has taken the plea that the petition is bad for mis-joinder and non-joinder of necessary parties. It was argued that the contractor with whom the petitioner was working on outsource was a necessary party, but this plea has no force in view of the fact that it is an admitted case of the respondents that initially the petitioner was engaged by the respondents on daily wages as a contractual employee and the petitioner has challenged the oral termination of his services by the respondents as such to decide this issue contractor is not a necessary party and accordingly issue no. 3 is decided against the respondents.

ISSUE NO. 4

25. Now coming to issue no. 4, the respondents have not been able to convince the Court that how the petition is not maintainable in the present form. Industrial Disputes Act has been raised by the petitioner and when conciliation failed the reference was made to this Court, which is legal and maintainable, as such issue no. 4 is decided against the respondents.

ISSUE NO. 5

26. In order to prove this issue, there is no evidence on record to show that there exists no relationship of employer and employee between the parties. Moreover, in view of my findings on issue no. 1, above it has been established on record that at the time of the termination of services of the petitioner, he was employee of the respondents corporation as such there is no force in the contention raised by the respondent in this regard. Hence, issue no. 5 is decided against the respondents.

RELIEF

27. For all the foregoing reasons discussed hereinabove supra, the claim filed by the petitioner is partly allowed and the reference is answered partly in affirmative. The respondents are directed to re-engage the services of the petitioner *w.e.f.* 01.09.2017 with seniority and continuity, but without any back-wages. The petitioner is also entitled to regularization of his services from the date when the services of his junior workman Shri Ricky have been regularized. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. File, after due completion, be consigned to records.

Announced in the open Court today on this 31st day of July, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

पंचायती राज विभाग

अधिसूचना

शिमला–171 009, दिनांक 04 अप्रैल, 2025

संख्याः पीसीएच–एचए(3)4 / 07–4285–89.––यह कि शहरी विकास विभाग द्वारा नगर पंचायत बनीखेत के गठन के दृष्टिगत विभाग की अधिसूचना संख्याः पीसीएच–एच(3)36 / 96–54288–96, दिनांक 31–12–2024 के अन्तर्गत ग्राम सभा पुखरी के आंशिक सभा क्षेत्र को अपवर्जित किया गया तथा ग्राम सभा पुखरी का नाम तथा मुख्यालय बदलकर ''उघराल'' करने हेतु प्रस्तावना विचाराधीन है;

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (वर्ष 1994 का 4) की धारा 3 की उप–धारा (2) के खण्ड (ग) व (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला चम्बा के विकास खण्ड भटियात की "ग्राम सभा पुखरी" का नाम व मुख्यालय बदलकर ''उघराल'' करने हेतु प्रस्ताव करते हैं और यथा अपेक्षित सम्बन्धित ग्राम सभा सदस्यों की जानकारी एवं सार्वजनिक आक्षेप आमंत्रित करने के लिए हिमाचल प्रदेश के राजपत्र में प्रकाशित करने एवं जिला चम्बा के उपायुक्त को उक्त बारे आक्षेप को प्राप्त करने तथा उन पर विचार करने के लिए प्राधिकृत करने के आदेश प्रदान करते हैं;

यदि ग्राम सभा पुखरी का नाम व मुख्यालय बदलकर ''उघराल'' करने बारे उक्त प्रस्ताव के सम्बन्ध में, सम्बन्धित ग्राम सभा सदस्यों को कोई आपत्ति प्रस्तुत करनी हो तो वे अपने आक्षेप इस अधिसूचना के जारी होने की दिनांक से 15 दिनों की अवधि के भीतर उपायुक्त, जिला चम्बा को प्रस्तुत कर सकेंगे। उपरोक्त नियत अवधि के अवसान के पश्चात् आक्षेप, जो कोई भी हों, ग्रहण नहीं किए जाएंगे;

राज्य सरकार, जिला चम्बा के, विकास खण्ड भटियात की ग्राम सभा पुखरी के नाम व मुख्यालय को बदलकर ''उघराल'' करने के सम्बन्ध में अंतिम अधिसूचना, उपायुक्त, जिला चम्बा, हि0प्र0 की सिफारिश के दृष्टिगत जारी करेगी।

आदेश द्वारा,

हस्ताक्षरित / –
सचिव (पंचायती राज)।

————————

In the Court of Tehsildar-cum**-Executive Magistrate, Bharmour, District Chamba (H.P.)**

Smt. Sumna Devi w/o Sh. Kewal Singh, r/o Village Bhadra, P.O. Badgran, Tehsil Bharmour, District Chamba, H.P. . .*Applicant.*

Versus

General Public

Proclamation under order 5, Rule 20 C.P.C. under Section 13(3) of the H.P. Registration of Birth and Death Act, 1969.

Whereas, Smt. Sumna Devi w/o Sh. Kewal Singh, r/o Village Bhadra, P.O. Badgran, Tehsil Bharmour, District Chamba, H.P. has filed affidavit for registration of delayed Birth of her daughter *i.e.* 06-03-2011 for further entry in the records of Gram Panchayat Badgran, Development Block Bharmour. It has been stated in the application that due to some unavoidable circumstances birth could not be registered well in time.

Sl. No.	Name	Date of Birth
1.	Abha Devi d/o Kewal Singh	06-03-2011

Hence, this proclamation is issued to the General Public, that if they have any objection/ claim regarding the registration of birth of above named in records of concerned Gram Panchayat Badgran may file their claim/objection on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued under my hand & seal today on this 25th day of March, 2025.

Seal. Sd/-
Tehsildar-cum-*Executive Magistrate,*
Bharmour, Distt. Chamba (H.P.).

In the Court of Tehsildar-cum**-Executive Magistrate, Bharmour, District Chamba (H.P.)**

Smt. Sumna Devi w/o Sh. Kewal Singh, r/o Village Bhadra, P.O. Badgran, Tehsil Bharmour, District Chamba, H.P. ..*Applicant.*

Versus

General Public

Proclamation under order 5, Rule 20 C.P.C. under Section 13(3) of the H.P. Registration of Birth and Death Act, 1969.

Whereas, Smt. Sumna Devi w/o Sh. Kewal Singh, r/o Village Bhadra, P.O. Badgran, Tehsil Bharmour, District Chamba, H.P. has filed affidavit for registration of delayed Birth of her son *i.e.* 01-03-2010 for further entry in the records of Gram Panchayat Badgran, Development Block Bharmour. It has been stated in the application that due to some unavoidable circumstances birth could not be registered well in time.

Sl. No.	Name	Date of Birth
1.	Rajesh Kumar s/o Kewal Singh	01-03-2010

Hence, this proclamation is issued to the General Public, that if they have any objection/ claim regarding the registration of birth of above named in records of concerned Gram Panchayat Badgran may file their claim/objection on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued under my hand & seal today on this 25th day of March, 2025.

Seal. Sd/-
Tehsildar-cum-*Executive Magistrate,*
Bharmour, Distt. Chamba (H.P.).

In the Court of Tehsildar-cum-**Executive Magistrate, Bharmour, District Chamba (H.P.)**

Smt. Jibo d/o Sh. Dhut, r/o Village Silpari, P.O. Tunda, Tehsil Bharmour, District Chamba, H.P. ..*Applicant.*

Versus

General Public

Proclamation under order 5, Rule 20 C.P.C. under Section 13(3) of the H.P. Registration of Birth and Death Act, 1969.

Whereas, Smt. Jibo d/o Sh. Dhut, r/o Village Silpari, P.O. Tunda, Tehsil Bharmour, District Chamba, H.P. has filed affidavit for registration of delayed Birth of herself *i.e.* 10-11-1951 for further entry in the records of Gram Panchayat Tunda, Development Block Bharmour. It has been stated in the application that due to some unavoidable circumstances birth could not be registered well in time.

Sl. No.	Name	Date of Birth
1.	Smt. Jibo d/o Shri Dhut	10-11-1951

Hence, this proclamation is issued to the General Public, that if they have any objection/ claim regarding the registration of birth of above named in records of concerned Gram Panchayat Tunda may file their claim/objection on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued under my hand & seal today on this 25th day of March, 2025.

Seal. Sd/-
Tehsildar-cum-*Executive Magistrate,*
Bharmour, Distt. Chamba (H.P.).

In the Court of Executive Magistrate-cum-**Naib Tehsildar, Dhatwal at Bijhari, Distt. Hamirpur (H.P.)**

In the matter of :

Sushma Devi

Versus

General Public

Notice to General Public.

Sushma Devi d/o Sh. Sohan Singh, r/o Village Baggi, P.O. Dakhyora, Tehsil Dhatwal at Bijhari, Distt. Hamirpur (H.P.) has applied in this office for the entry of her date of birth which has taken place on 05-05-1961 but due to ignorance the same could not be entered in the record of

Gram Panchayat Sathwin. The applicant in support of the facts of the event has submitted the requisite documents and the same have been perused accordingly.

General public is hereby informed through this notice that if any person having any objection regarding the entry of date of birth of the applicant which is 05-05-1961, they can file their objections either in writing or through their counsel with a period of 30 days from the date of issue of this notice, if no objection is received from any person regarding the date of birth which is 05-05-1961 the same will be registered accordingly.

Issued under my hand and seal of the court on 27-03-2025.

Seal. Sd/-

Executive Magistrate-cum-Naib Tehsildar,
Dhatwal at Bijhari, District Hamirpur (H.P.).

In the Court of Marriage Officer-cum-**Sub-Divisional Magistrate, Bhoranj,**
Distt. Hamirpur (H. P.)

1. Shri Raghubeer Singh s/o Shri Mani Ram, VPO Jharlog Buhla, Tehsil Bhoranj, District Hamirpur aged 31 year old.

2. Chandni Kumari d/o Sh. Banarasi Mehta, Village Ratan, Ward No. 4, P.O. Bagras, Tehsil Bhakri, District Begusrai, Bihar aged 21 years old

Versus

General Public

Shri Raghubeer Singh s/o Shri Mani Ram, VPO Jharlog Buhla, Tehsil Bhoranj, District Hamirpur & Chandni Kumari d/o Sh. Banarasi Mehta, Village Ratan, Ward No. 4, P.O. Bagras, Tehsil Bhakri, District Begusrai, Bihar have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws amendment (Act 01, 49 of 2001) that they have solemnized their marriage ceremony on dated 21-09-2023 at Baba Sidh Mandir Chano Pir Dukh Nivaran Mandir Aghar, Tehsil & District Hamirpur, H.P. as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objections personally or in writing before this court on or before 08-05-2025. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 25-03-2025 under my hand and seal of the court.

Seal. Sd/-

Marriage Officer-cum-*Sub-Divisional Magistrate,*
Bhoranj, Distt. Hamirpur (H.P.).

In the Court of Marriage Officer-cum-**Sub-Divisional Magistrate, Bhoranj,**
Distt. Hamirpur (H. P.)

1. Shri Rajat Sharma s/o Hem Raj, Village Keharwin, P.O. Baloh, Tehsil Bhoranj, District Hamirpur aged 29 years old.

2. Neha d/o Sh. Ravi Kumar, Village Dari, Ward No. 4, P.O. Bagwara, Tehsil Tauni Devi at Bamsan aged 22 years old.

Versus

General Public

Shri Rajat Sharma s/o Hem Raj, Village Keharwin, P.O. Baloh, Tehsil Bhoranj, District Hamirpur, H.P. & Neha d/o Sh. Ravi Kumar, Village Dari, P.O. Bagwara, Tehsil Tauni Devi at Bamsan have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws as amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on dated 23-02-2025 at Awah Devi Mandir, Tehsil Tauni Devi, District Hamirpur.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 10-04-2025. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 24-03-2025 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub-Divisional Magistrate,*
Bhoranj, Distt. Hamirpur (H.P.).

In the Court of Marriage Officer-cum-**Sub-Divisional Magistrate, Bhoranj,**
Distt. Hamirpur (H. P.)

1. Shri Sunil Kumar s/o Karam Singh, Village Chamboh, P.O.Chamboh, Tehsil Bhoranj, District Hamirpur, H.P. aged 45 years old.

2. Seema Kumari d/o Sh. Bakshi Ram, Village Aghar, Tehsil & District Hamirpur, H.P. aged 43 years old.

Versus

General Public

Shri Shri Sunil Kumar s/o Karam Singh, Village Chamboh, P.O.Chamboh, Tehsil Bhoranj, District Hamirpur, H.P. & Seema Kumari d/o Sh. Bakshi Ram, Village Aghar, Tehsil & District Hamirpur, H.P. have filed an application alongwith affidavits in this court under section 16 of

Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws as amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on dated 30-04-2002 at Village Chamboh, Tehsil Bhoranj, Distt. Hamirpur as per Hindu Rites an Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 08-05-2025. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 25-03-2025 under my hand and seal of the court.

Seal. Sd/-

Marriage Officer-cum-*Sub-Divisional Magistrate,*
Bhoranj, Distt. Hamirpur (H.P.).

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप–तहसील लगडू, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 02 / 2025 तारीख पेशी : 25–04–2025

श्री नेक राम पुत्र लिहखु राम, गांव लगडू, डा0 लगडू, उप–तहसील लगडू, जिला कांगड़ा, हि0 प्र0। ..वादी।

बनाम

आम जनता गांव लगडू, डा0 लगडू, उप–तहसील लगडू, जिला कांगड़ा, हि0 प्र0।
प्रधान / सचिव ग्राम पंचायत लगडू। ..प्रतिवादी।

विषय.––हिमाचल प्रदेश जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13(3) के अन्तर्गत जन्म पंजीकरण बारे।

वादी श्री नेक राम पुत्र लिहखु राम, गांव लगडू, डा0 लगडू, उप–तहसील लगडू, ने इस अदालत में आवेदन प्रस्तुत करके अनुरोध किया है कि उसका जन्म दिनांक 04–06–1951 को हुआ है परन्तु इसका पंजीकरण ग्राम पंचायत लगडू में नहीं करवाया है। इसलिए उसके जन्म पंजीकरण का आदेश ग्राम पंचायत लगडू को जारी किया जाए।

अतः इस कोर्ट नोटिस मुनादी के माध्यम से आम जनता व सभी प्रतिवादियों को सूचित किया जाता है कि किसी को भी इस जन्म पंजीकरण बारे कोई उजर / एतराज हो तो वह इस मामले की तयशुदा तारीख पेशी 25–04–2025 को समय 11.00 बजे सुबह इस अदालत में असालतन या वकालतन हाजिर आकर प्रस्तुत करे। गैरहाजिरी की सूरत में नियमानुसार कार्रवाई अमल में लाई जावेगी तथा इस जन्म पंजीकरण के आदेश पारित कर दिए जायेंगे।

यह इश्तहार आज दिनांक 27–03–2025 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –

नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप–तहसील लगडू, जिला कांगड़ा (हि0 प्र0)।

ब अदालत तहसीलदार एवं सहायक समाहर्ता, द्वितीय श्रेणी, पालमपुर,
जिला कांगड़ा (हि0 प्र0)

मुकद्दमा नं0 : किस्म मुकद्दमा : नाम दुरुस्ती तारीख पेशी : 08–04–2025

पुष्पा कुमारी पुत्री अमर नाथ हाल पत्नी शंकर दास, निवासी वौदा लौहानटी (Bhoda Lohanti), हाल निवासी वार्ड नं0 2, पालमपुर, नियर आर्य समाज मंदिर, तहसील पालमपुर, जिला कांगड़ा, हि0 प्र0।

बनाम

आम जनता

प्रार्थिया पुष्पा कुमारी पुत्री अमर नाथ हाल पत्नी शंकर दास, निवासी वौदा लौहानटी (Bhoda Lohanti), हाल निवासी वार्ड नं0 2, पालमपुर, नियर आर्य समाज मंदिर, तहसील पालमपुर, जिला कांगड़ा, हि0 प्र0 ने इस अदालत में प्रार्थना–पत्र प्रस्तुत कर व्यक्त किया है कि प्रार्थिया का नाम आधार कार्ड में पुष्पा लता है परन्तु जन्म प्रमाण–पत्र में पुष्पा कुमारी है, जोकि सही है। अब प्रार्थिया अपने नाम की दुरुस्ती करने उपरान्त सही नाम आधार कार्ड में दर्ज किया जाए।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त नाम की दुरुस्ती बारे किसी को कोई एतराज हो तो वह दिनांक 08–04–2025 को असालतन व वकालतन इस कार्यालय में हाजिर होकर उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 19–03–2025 को हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
पालमपुर, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, सदर, जिला मण्डी,
हिमाचल प्रदेश

मिसल नं0 : 58 / 2025 तारीख मजरूआ : 05–11–2024 तारीख पेशी : 26–04–2025

श्री गगन प्रदीप पुत्र श्री लेख राम, निवासी गांव सयोग, डाकघर पण्डोह, तहसील सदर, जिला मण्डी (हि0प्र0) प्रार्थी।

बनाम

आम जनता प्रत्यार्थी।

प्रार्थना–पत्र जेर धारा 37 ता 38 भू–राजस्व अधिनियम, 1957 के अन्तर्गत नाम दुरुस्ती बारे।

श्री गगन प्रदीप पुत्र श्री लेख राम, निवासी गांव सयोग, डाकघर पण्डोह, तहसील सदर, जिला मण्डी (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दायर किया है कि मेरे पिता जी का नाम लेख राम है और जाति / गोत्र, राजपुत / भारद्वाज है। पटवार वृत्त पण्डोह में पिता का नाम लेख राज और जाति / गोत्र, खत्री / गोयल दर्ज किया गया है जोकि गलत है। जिसे अब सम्बन्धित राजस्व रिकार्ड के मुहाल सियोग में मेरा नाम व जाति दुरुस्त करने के आदेश पारित करने की कृपा करें।

प्रार्थना–पत्र में वर्णित प्रार्थी के पिता का नाम व जाति दुरुस्त करने बारा आम जनता को गजट राजपत्र हिमाचल प्रदेश में प्रकाशन के माध्यम से सूचित किया जाता है कि अगर किसी व्यक्ति को उक्त प्रार्थी के पिता का नाम लेख राम पुत्र मानदास व जाति / गोत्र, राजपुत / भारद्वाज को मुहाल भलेड़ के राजस्व रिकार्ड में दर्ज किये जाने बारा कोई उजर / एतराज हो तो वह अससालतन या वकालतन अपना एतराज इस न्यायालय में दिनांक 26–04–2025 को प्रातः 11.00 बजे उपस्थित होकर प्रस्तुत कर सकते हैं। निश्चित अवधि के दौरान कोई भी उजर / एतराज न आने की सूरत में आम जनता के विरुद्ध एकतरफा कार्यवाही अमल में लाई जावेगी तथा उक्त प्रार्थी के पिता के नाम की दुरुस्ती के आदेश पारित कर दिए जाएंगे।

यह इश्तहार आज दिनांक 27–03–2025 को हमारे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
तहसील सदर, जिला मण्डी (हि0 प्र0)।

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In the Court of Sub-Divisional Magistrate Rajgarh, District Sirmaur, Himachal Pradesh

In the matter of :

Smt. Dropta Devi w/o Shri Virender Kumar, r/o Village Rehri Gusan, Post Office thor Niwar, Tehsil Rajgarh, District Sirmaur, Himachal Pradesh . . *Applicant.*

Application for change of name in the Aadhar Card which has wrongly been entered as Dropata Urf Anu.

Notice to General Public

The above named applicant has submitted an application supported by an affidavit stating that her name has been incorrectly spelled as **Drpata** and entered as **Dropata Urf Anu** in her Aadhar Card. She has requested that it be corrected to **Dropta Devi** instead of **Dropata Urf Anu**.

Therefore, the General Public is hereby notified through this publication that if anybody has any objection for the change of name from "**Dropata Urf Anu"** to **"Dropta Devi"** in the Aadhar Card they may submit their written or oral objections before the undersigned on or before 12-04-2025.

If no objections are received by the said date, it will be presumed that there is no objection and necessary orders will be issued to the Aadhar Center for the correction of the name accordingly.

Given under my hand and seal of the court today on this 21st day of March, 2025.

Seal. Sd/-
Sub-Divisional Magistrate,
Rajgarh , District Sirmaur (H.P.).

समक्ष श्री नवीन कुमार, कार्यकारी दण्डाधिकारी, रेणुकाजी स्थित संगड़ाह, जिला सिरमौर, हि0प्र0

मिसल नं0 : / 2025 तारीख पेशी : 30–04–2025

श्रीमती मीरा देवी पुत्री श्री जोगिन्द्रर सिंह, निवासी गांव शिवपुर, तहसील रेणुकाजी, जिला सिरमौर, हि0प्र0।

बनाम

आम जनता

विषय.––जन्म एवं मृत्यु पंजीकरण दर्ज करने बारे प्रार्थना–पत्र।

उपरोक्त प्रार्थना–पत्र श्रीमती मीरा देवी पुत्री श्री जोगिन्द्रर सिंह, निवासी गांव शिवपुर, तहसील रेणुकाजी, जिला सिरमौर, हि0प्र0 ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके प्रार्थना की है कि उसके पुत्र नितीन की जन्म तिथि 10–09–2005 है, जो ग्राम पंचायत शिवपुर के रिकार्ड में दर्ज नहीं है जिसे प्रार्थिया अब दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि इस सम्बन्ध में किसी व्यक्ति को कोई उजर एवं एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 30–04–2025 को प्रातः 10.00 बजे हमारी अदालत में उपस्थित होकर उजर / एतराज प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई उजर काबिलेगौर न होगा तथा प्रार्थिया के पुत्र का नाम व जन्म तिथि दर्ज करने के आदेश जारी कर दिये जाएंगे।

आज दिनांक 21–03–2025 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
(नवीन कुमार),
कार्यकारी दण्डाधिकारी,
रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर, (हि0प्र0)।

In the Court of Dr. Poonam, HPAS, Marriage Officer-cum-Sub Divisional Magistrate, Solan, Tehsil & District Solan (H.P.)

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT

Whereas, Mr. Onkar Chand Panwar, son of Mr. Garib Dass Panwar, resident of Panwar Niwas, House No. 40/12, Brar Road, Solan, Tehsil and District Solan (H.P.) and Mrs. Surindra

daughter of Mr. Dilip Singh and wife of Mr. Onkar Chand Panwar, resident of Panwar Niwas, House No. 40/12, Brar Road, Solan, Tehsil and District Solan (H.P.) have filed an application for the registration of their marriage which was solemnized on 14-11-1991 and they have been living as husband and wife ever since then.

And whereas, both applicants have submitted in their application and in their affidavits that Mr. Onkar Chand Panwar and Mrs. Surindra were unmarried at the time of solemnization of their marriage and were major in age and having no prohibited relations to each other, debarring them to marry each other. Both the applicants have requested for registration of their marriage.

Notices have been served to all concerned and General Public to this effect that if anybody has got any objection regarding the registration of marriage duly solemnized between the above parties *i.e.* Mr. Onkar Chand Panwar and Mrs. Surindra they may file their written objections and appear personally or through their authorized agents before me within a period of thirty days from the date of issuance of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court post which no objection will be heard or accepted.

Issued under my hand and seal of the court on this 20th day of March, 2025.

Seal.

Dr. POONAM, HPAS,
Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).

In the Court of Dr. Poonam, HPAS, Marriage Officer-cum-Sub Divisional Magistrate, Solan, Tehsil & District Solan (H.P.)

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT

Whereas, Mr. Mandeep Singh son of Mr. Jaspal Singh, resident of 567/12/12, Near Jat School Ashoka Garden Colony, Kaithal, Haryana and Mrs. Aditi Malhotra wife of Mr. Mandeep Singh and daughter of Mr. Shashi Malhotra, resident of Ward No. 1, Barog (801), Tehsil and District Solan (H.P.) have filed an application for the registration of their marriage which was solemnized on 11-12-2024 and they have been living as husband and wife ever since then.

And whereas, both applicants have submitted in their application and in their affidavits that Mr. Mandeep Singh and Mrs. Aditi Malhotra were unmarried at the time of solemnization of their marriage and were major in age and having no prohibited relations to each other, debarring them to marry each other. Both the applicants have requested for registration of their marriage.

Notices have been served to all concerned and General Public to this effect that if anybody has got any objection regarding the registration of marriage duly solemnized between the above parties *i.e.* Mr. Mandeep Singh and Mrs. Aditi Malhotra they may file their written objections and appear personally or through their authorized agents before me within a period of thirty days from the date of issuance of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court post which no objection will be heard or accepted.

Issued under my hand and seal of the court on this 24th day of March, 2025.

Seal.

Dr. POONAM, HPAS,
Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).

ब अदालत कार्याकारी दण्डाधिकारी ऊना, तहसील व जिला ऊना (हि0 प्र0)

केस नं0 :	किस्म मुकद्दमाः	तारीख दायरः	तारीख पेशीः
04/B & D/T/U/2025	जन्म पंजीकरण	24–03–2025	25–04–2025

1. श्री विरेन्दर शर्मा पुत्र केवल कृष्ण शर्मा, वासी # HIG-123 फेस–IV, रक्कड़ कलोनी, तहसील व जिला ऊना, हि0प्र0।

बनाम

आम जनता

''इश्तहार राजपत्र हिमाचल प्रदेश / मुश्त्री मुनादी व चस्पानगी''।

विषय.––प्रार्थना–पत्र जन्म पंजीकरण प्रार्थी श्री विरेन्दर शर्मा पुत्र केवल कृष्ण शर्मा, वासी # HIG-123 फेस–IV, रक्कड़ कलोनी, तहसील व जिला ऊना, हि0प्र0 बाबत दिए जाने आदेश रजिस्ट्रेशन जन्म पंजीकरण आशीष शर्मा जन्म तिथि 22–08–1987 पुत्र विरेन्दर शर्मा व सुमन शर्मा एम.सी. ऊना, तहसील व जिला ऊना, हि0प्र0।

प्रार्थना–पत्र प्रार्थी श्री विरेन्दर शर्मा पुत्र केवल कृष्ण शर्मा, वासी # HIG-123 फेस–IV, रक्कड़ कलोनी, तहसील व जिला ऊना, हि0प्र0 बाबत दिए जाने आदेश रजिस्ट्रेशन जन्म पंजीकरण आशीष शर्मा जन्म तिथि 22–08–1987 पुत्र विरेन्दर शर्मा व सुमन शर्मा एम.सी. ऊना, तहसील व जिला ऊना, हि0प्र0 ने इस अदालत में एक प्रार्थना–पत्र दायर किया है कि उनके पुत्र आशीष शर्मा का जन्म दिनांक 22–08–1987 को एम.सी. ऊना में हुआ था परन्तु यह जन्म पंजीकरण अनभिज्ञता के कारण एम.सी. ऊना के रजिस्टर में दर्ज न हो सका।

अतः ''इश्तहार राजपत्र हिमाचल प्रदेश / मुश्त्री मुनादी व चस्पांनगी'' के माध्यम से आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि अगर किसी को उपरोक्त जन्म पंजीकरण बारे कोई उजर व एतराज हो तो वह दिनांक तारीख पेशी 25–04–2025 को सुबह 10.00 बजे से लेकर शाम 5.00 बजे तक इस न्यायालय में असालतन या वकालतन अपना एतराज अधोहस्ताक्षरी के न्यायालय में उपस्थित होकर पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जाकर एम.सी. ऊना को उक्त पंजीकरण करने के आदेश जारी कर दिये जाएंगे। उसके उपरान्त कोई उजर / एतराज काबिले समायत न होगा।

आज दिनांक 24–03–2025 को मेरे हस्ताक्षर व मोहर अदालत से द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
ऊना, जिला ऊना (हि0 प्र0)।

In the Court of Sub-Divisional Magistrate, Chopal, District Shimla (H. P.)

Case No. ..../2025

In the matter of :

Sh. Ram Lal Gazta s/o Late Shri Ratti Ram, r/o Village Chaukiya, P.O. & Tehsil Chopal, District Shimla (H.P.) ..*Applicant.*

Versus

General Public ..*Respondent.*

Notice/Proclamation Regarding Correction of Name of Shri Ram Lal Gazta.

Whereas, applicant Sh. Ram Lal Gazta s/o Late Shri Ratti Ram, r/o Village Chaukiya, P.O. & Tehsil Chopal, District Shimla (H.P.) has submitted an application to this Court with the request that in some documents his name is entered as R. L. Gazta which is his short name, his full name is Ram Lal Gazta. That he has changed his name from R.L. Gazta to Ram Lal Gazta. That he will not use his previous name R. L. Gazta in future.

Now, therefore, objections are invited from the general public that if, anyone has any objection regarding correction of name R. L. Gazta to Ram Lal Gazta, they may appear before the undersigned on or before 25-04-2025 either personally or through their authorized agent/pleader.

In the event of their failure to do so, order will be passed ex-parte without affording any further opportunity of being heard.

Issued today on 24th day of March, 2025 under my hand and seal of the Court.

Seal. Sd/-
Sub-Divisional Magistrate,
Chopal, District Shimla (H.P.).

CHANGE OF NAME

I, Krishna Gaur w/o Late Dr. Pankaj Gaur, r/o Krishna Niwas, Yashwant Vihar, Shimla Road, Nahan, District Sirmaur (H.P.) declare that I have changed my name from Krishna Chandel to Krishna Gaur. All concerned please may note.

KRISHNA GAUR
w/o Late Dr. Pankaj Gaur,
r/o Krishna Niwas, Yashwant Vihar,
Shimla Road, Nahan, District Sirmaur (H.P.).

CHANGE OF NAME

I, Manpreet Singh s/o Late Sh. Bhupender Singh Niddar, r/o The Eyerie, Barog By Pass Road, House No. 40B, Anji (645), Solan (H.P.) declare that my name is recorded as Manpreet Hans in my daughter's namely Gunnika Hans 10th Certificate/Marksheet which is wrong. My correct name should be recorded as Manpreet Singh Hans in my daughter's 10th Certificate/Marksheet and issue a new Certificate/Marksheet.

MANPREET SINGH
s/o Late Sh. Bhupender Singh Niddar,
r/o The Eyerie, Barog By Pass Road,
House No. 40B, Anji (645), Solan (H.P.).

CHANGE OF NAME

I, Bishan Devi w/o Sh. Bhagi Rath, r/o Village Bhabter, P.O. Gagruhi, Tehsil Jawalamukhi, District Kangra (H.P.) declare that I have changed my name from Biasa Devi to Bishan Devi for all purposes in future. Please note.

BISHAN DEVI
w/o Sh. Bhagi Rath,
r/o Village Bhabter, P.O. Gagruhi,
Tehsil Jawalamukhi, District Kangra (H.P.).

हिमाचल प्रदेश चौदहवीं विधान सभा

अधिसूचना

शिमला–171004, 02 अप्रैल, 2025

सं0: वि0स0–विधायन–प्रा0 / 1–1 / 2023.––राज्यपाल महोदय का निम्नलिखित आदेश दिनांक 31 मार्च, 2025 सर्वसाधारण की सूचनार्थ प्रकाशित किया जाता है :––

''मैं, शिव प्रताप शुक्ल, राज्यपाल, हिमाचल प्रदेश, भारतीय संविधान के अनुच्छेद 174 (2) (ए) द्वारा प्रदत्त शक्तियों के अनुसरण में हिमाचल प्रदेश चौदहवीं विधान सभा के अष्टम् सत्र का तत्काल सत्रावसान करता हूं।

शिव प्रताप शुक्ल
राज्यपाल,
हिमाचल प्रदेश।''

आदेश द्वारा:–

यशपाल शर्मा
सचिव,
हि0 प्र0 विधान सभा।

HIMACHAL PRADESH FOURTEENTH VIDHAN SABHA

NOTIFICATION

Shimla–171 004, *the 2nd April*, 2025

No. V.S.-Legn.-Pri/1-1/2023.—The following order by the Governor of the State of Himachal Pradesh, dated the 31st March, 2025 is hereby published for general information:—

''मैं, शिव प्रताप शुक्ल, राज्यपाल, हिमाचल प्रदेश, भारतीय संविधान के अनुच्छेद 174 (2) (ए) द्वारा प्रदत्त शक्तियों के अनुसरण में हिमाचल प्रदेश चौदहवीं विधान सभा के अष्टम् सत्र का तत्काल सत्रावसान करता हूं।

शिव प्रताप शुक्ल
राज्यपाल,
हिमाचल प्रदेश।''

By Order:-

YASH PAUL SHARMA
Secretary,
H.P. Vidhan Sabha.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।