राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 11 अप्रैल, 2025 / 21 चैत्र, 1947

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, the 18th 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, 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.19/2019	Ms. Rachna Devi	Sh. Vikram Bhojia & Anr.	10.12.2024
2.	App. 59/2021	Ms. Kamla Devi	Sh.Vikram Bhojia & Anr.	10.12.2024
3.	Ref. 121/2016	Sh. Mukesh Kumar Sharma	Management/Employer Punjab Kesri.	12.12.2024
4.	Ref. 44/2021	Smt. Suman Mittal	M/s SSIPL (P) Ltd.	14.12.2024
5.	App. 30/2017	Sh. Amit Kumar	M/s Universal Power Products (P) Ltd.	14.12.2024
6.	App.12/2022	Sh. Sukh Dev Tiwari	M/s Beta Drugs	14.12.2024
7.	App. 59/2018	Sh. Manohar Singh	Company Balaji Power	14.12.2024
8.	App. 144/2017	Sh. Pawan Kumar	State of H.P.	23.12.2024
9.	Ref. 20/2021	Sh. Mahender Pal	M/s Himachal Energy (P) Ltd.	30.12.2024
10.	Ref. 21/2021	Sh. Hemant Kumar	M/s Himachal Energy (P) Ltd.	30.12.2024
11.	Ref. 22/2021	Sh. Balbir Singh	M/s Himachal Energy (P) Ltd.	30.12.2024
12.	Ref. 23/2021	Sh. Yoginder	HPL Electric & Power Ltd.	30.12.2024
13.	Ref. 24/2021	Sh. Mukesh Kumar	M/s Himachal Energy (P) Ltd.	30.12.2024
14.	Ref. 26/2021	Smt. Janki Devi	HPL Electric & Power Ltd.	30.12.2024
15.	Ref. 35/2021	Sh. Anil Kumar	HPL Electric & Power Ltd.	30.12.2024
16.	Ref. 50/2021	Smt. Meera Devi	HPL Electric & Power Ltd.	30.12.2024
17.	Ref. 61/2021	Sh. Ashwani Kumar	HPL Electric & Power Ltd./ Himachal Energy (P) Ltd.	30.12.2024
18.	Ref.62/2021	Sh. Vijay Krishan	HPL Electric & Power Ltd.	30.12.2024

By order,

Sd/-
(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 : 19 of 2019

Instituted on : 19.03.2019

Decided on : 10.12.2024

Rachna Devi, V.P.O. Manpura, Tehsil Baddi, District Solan, H.P. . . *Petitioner*.

Versus

1. Sh. Vikram Bhojia Secretary M/s Bhojia Charitable Trust for Science Research and Social Welfare, V.P.O. Bhud, Tehsil Baddi, District Solan, H.P.

2. Registrar, H.P. University Summer Hills, Shimla (H.P). . . *Respondents*.

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

For the petitioner : Sh. H.C. Thakur, Advocate

For the respondent no. 1 : Sh. Rajeev Sharma, Advocate

For the respondent no. 2 : Sh. Jagroop Singh, 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 she was employed by the respondent no. 1 as worker *w.e.f.* 11.02.2014 and she was being paid salary of Rs. 6,500/- per month whereas as per the regulations framed by the University under UGC Act, all the employees have to be appointed on regular/permanent basis and they are to be paid, pay scale of UGC. The respondent no. 1 college is affiliated with H.P. University, however the respondent no. 2 failed to get these regulations implemented despite requests made by the workers. The respondent no. 1 has admitted before the Hon'ble High Court of H.P. to implement the UGC Regulations but regular pay scale were not paid as per entitlement. The petitioner had worked continuously more than 240 days and her services have been terminated *w.e.f.* 02.06.2018 in an unlawful manner without complying with the Section 25-F of the Act. Through, this claim petition it has been prayed by the petitioner that she is entitled to be reinstated with retrospective effect along with all consequential benefits including full back wages.

3. Notice(s) of this application were sent to the respondents in pursuance thereof respondent no. 1 filed reply wherein it took preliminary objections qua maintainability, the applicant was appointed on the post of sweeper on fixed terms contractual basis due to the reason that at the time of appointment there was need for the sweepers in the hostel, due to increase in the numbers of the students. On 31.05.2018 after completion of the contract the applicant was relieved from the contractual services. Applicant has not come to this Court with clean hand and has concealed the material facts from the Court. It was claimed that the requirement of the filing of direct application before this Court is to file a certificate from the conciliation officer that the conciliation is pending on the demand notice of the applicant for more than 45 days. Additional plea that the applicant is gainfully employed was also taken. On merits, it was reiterated that the applicant was engaged as sweeper on contractual fixed terms basis vide letter of contract dated 11.02.2014 on the application of applicant dated 15.01.2014. Applicant joined the duty on 21.02.2014. It was disputed that the services of the applicant/ petitioner were permanent in nature. The vacancies in colleges and educational institutions depend on the number of the students in any particular academic year, as such all the sweeper and house keepers are kept on fixed terms contractual basis. The regulation of UGC are applicable to the teaching staff as per the law and Hon'ble Supreme Court of India has laid down that the teachers are not workers and they do not fall under the definition of a worker as per the Industrial Disputes Act, 1947. So far as the judgment of Hon'ble High court of Himachal Pradesh dated 06.03.2018 in CWPIL No. 167/2017, is concerned, the matter was decided by the Hon'ble High Court with the directions to the employees

of the answering respondent to discuss the matter and their outstanding dues with the respondent. No one approached the respondent after the order was passed by the Hon'ble High Court on 06.03.2018, despite the fact that the respondent wrote letter to all the non-teaching staff/ employees including the applicant for making a claim of the dues if any from the respondent. The contract of the services of the applicant came to an end on dated 31.05.2018 as per the terms & conditions of the contract of the applicant and completion of 240 days is of no help to the petitioner. The respondent prayed for the dismissal of the claim petition.

4. Respondent no. 2 contested the claim by filing reply, wherein preliminary objection of maintainability has been taken. On merits, it is admitted that respondent no. 1 college is affiliated with HP University (respondent no. 2). It is averred that the UGC Regulations 2009 have been adopted by the respondent no. 1 and thereafter circulated to all affiliated colleges vide notification dated 09.07.2010. It is denied that the respondent no. 2 university has failed to get these regulations implemented. It is averred that the respondent no. 2 university only has the provisions of rules relating to the teachers of non-government affiliated colleges and prayed for the dismissal of the claim petition.

5. Applicant filed rejoinder in which she 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 25.02.2022 :

1. Whether the services of the petitioner have been terminated illegally by the respondent without complying with the provisions of Industrial Disputes Act, 1947 as alleged? . . *OPP*.

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

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

4. Relief

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

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

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

Issue No. 1 : No

Issue no. 2 : No. Not entitled to any relief

Issue No. 3 : Yes

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

REASONS FOR FINDINGS

Issues No. 1 and 2

10. Both these issues are interlinked and inter-connected and can be disposed off by the same amount of discussion of evidence on record, as such both issues are taken up together. The onus to prove issues no.1 and 2 is on the petitioner & onus to prove issue no. 3 is on the respondent.

11. To prove the averments as raised in the claim petition, the petitioner stepped into the witness box as PW-1 who led her evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the claim petition. During cross-examination, she admitted that she was engaged by the respondent on contract basis. She admitted that she had accepted the appointment letter after going through the terms & conditions. She further admitted that her contract was over on 31.05.2018 and no demand notice was raised by her. During cross-examination by the respondent no. 2 she admitted that she has no claim against the respondent no. 2.

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

13. In rebuttal, respondent examined Shri Vikram Bhojia 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 tender in evidence application for employment Ex. RW-1/B, offer of appointment Ex. RW-1/C, joining report Ex. RW-1/D, nomination and declaration Ex. RW-1/E, attendance application Ex. RW-1/F, extension of contract Ex. RW-1/G, renewable of contract Ex. RW-1/H, daily attendance report Ex. RW-1/J, extension of contractual employment Ex. RW-1/K, transfer order Ex. RW-1/L, extension of contract Ex. RW-1/M, extension of contract Ex. RW-1/N, letter dated 25.04.2018 Ex. RW-1/P, warning relieving Ex. RW-1/Q, reply to conciliation officer Ex. RW-1/R, High Court Judgment Ex. RW-1/S, letter dated 23.12.2016 Ex. RW-1/T.

14. During cross-examination, he showed ignorance that the petitioner is illiterate and she was member of Dental Employees Union. He admitted that union had raised demand notice before the Labour Officer.

15. During cross-examination by the respondent no. 2, he admitted that the non teaching staff is under the supervision and control of the respondent college.

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

17. Coming to the claim in hand, the petitioner has filed the present claim alleging therein that she was engaged as worker/sweeper by respondent no. 1 on 11.02.2014 and she regularly worked as such till 02.06.2018 on contract basis to the complete satisfaction of respondent no. 1. She has further claimed that she was not being paid wages as per the UGC norms and government rules applicable to respondent no. 1. Her services were terminated in an unlawful manner without complying with the mandatory provisions of the Act.

18. So far as the claim of the petitioner is concerned that respondent no. 1 has taken a plea that petitioner was never engaged on regular basis rather she was engaged on contract basis and her contractual employment was not extended after the contract period was over and her services automatically stood dispensed.

19. Admittedly, no appointment letter for regular service was issued to the petitioner by the respondent college. Petitioner has admitted her signature on Ex. RW-1/B *vide* which had been

applied for the post of Safai Karamchari. She has also admitted her signature on Ex. RW-1/C which is offer of appointment to the petitioner on contract basis. These documents clearly establishes on record that the petitioner was engaged on contractual basis as per the terms of Ex. RW-1/C. Document Ex. RW-1/C clearly establish on record that total period of contract for which the petitioner was employed was five years which was to be calculated from the date of joining of the petitioner. Joining report was submitted by the petitioner vide Ex. RW-1/D on 21.02.2014. Petitioner has also admitted her signature Ex. RW-1/G vide which she had applied for extension of contract period. It is evident from the record that the contracts entered with the petitioner were renewed from time to time but the contract lastly executed/ extended expired on 30.03.2018 and thereafter the contract was not renewed. There is ample evidence on record to establish that petitioner was a contractual employee and was not on regular roles with the respondent.

20. Though, with the evidence, as available on record, it stands established that the petitioner was a workman as she was not doing any supervisory or managerial work, but she was required to prove that she was in regular service, which she has miserably failed to prove on record. Even if it is assumed that the petitioner has completed 240 days continuously since 2013 to 31.03.2018 that would not make her entitled to claim that she was in regular service, as number of days do 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) ……....."

21. 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.

22. Though, it was contended that the Hon'ble High Court of HP passed an order in CWPIL No. 167/2017 decided on 06.03.2018 had directed to respondent to regularize the employees who had been in service on contract for several years. The copy of said judgment has placed on record. The relevant paras of the judgment which read as under:

> "**2. On the asking of the Court, the respondent institute, namely Bhojia Dental College & Hospital/ Bhojia Institute of Life Sciences/ Bhojia Institute of Nursing/ Bhojia Charitable Trust for Science Research & Social Welfare had endeavoured to have the dispute amicable resolved. For such purpose, a meeting was fixed in the College itself and as Mr. Rajish Maniktala, Advocate, informed us, none, including the letter petitioner came to attend the said meeting.**

3. As such, as pointed out by all the learned counsel appearing for the respective parties, including the learned Amicus Curiae, we are persuaded to close the present proceedings, leaving it open for the letter petitioner to approach the respondents/authorities for payment of dues in accordance with law and redressal of any other grievances, if any. Mr. Rajnish Maniktala, Advocate, assures that with the receipt of such representation/ any of the employees approaching the management, appropriate action shall positively be taken expeditiously in accordance with law."

The perusal of the aforesaid judgment establish that no such directions as claimed by the petitioner were issued in favour of the applicant to pay her regular scales as per the UGC Scales or to regularize her service.

23. 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

24. The respondent has claimed that application is not maintainable, as the petitioner has directly approached the Court under Section 2-A of the Act, without filing a certificate of conciliation officer that the conciliation was pending on demand notice of the applicant for more than 45 days. Coming to the case in hand, the petitioner has failed to produce any record which could go to show that the petitioner had raised the demand notice before the Conciliation Officer. Even, the petitioner has not bothered to produce on record failure report nor there is any mention in the claim petition that demand notice was raised and after a lapse of 45 days, the present application has been filed by the petitioner to entitle her to file application under Section 2-A. The petitioner in her statement has stated that she had not raised any demand notice though the demand notice is on record but the same is not proved in accordance of law. There is no mentioned in the pleading of the petitioner that the conciliation proceeding were pending before the Labour Officer and petition under Section 2-A, has been filed after laps of 45 days. In absence of any document and pleadings to prove this fact it is held that the application is filed directly to this court without complying with the mandate under Section 2-A of the Act, as such the petition is held to be non-maintainable as such issue no.3 is answered in affirmative.

Relief

25. In view of my findings on issues no.1 to 3, 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.

26. 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 10th day of December, 2024.

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

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

Application No : 59 of 2021

Instituted on : 25.06.2021

Decided on : 10.12.2024

Kamla Devi wd/o Sh. Ramesh, r/o Village Kona, P.O. Nanakpur, Tehsil Kalka, District Panchkula (HR) . . *Petitioner*.

Versus

1. Sh. Vikram Bhojia, Secretary, M/s Bhojia Charitable Trust for Science Research and Social Welfare, V.P.O. Bhud, Tehsil Baddi, District Solan, H.P.

2. Registrar, H.P. University Summer Hill, Shimla (H.P.) . . *Respondents*.

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

For the petitioner : Sh. H.C. Thakur, Advocate

For the respondent no. 1 : Sh. Rajeev Sharma, Advocate

For the respondent no. 2 : Sh. Jagroop Singh, 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 she had been recruited as class IV safai karamchari in the institute run by respondent no. 1 on 11.07.2013. The petitioner had regularly worked as class IV *w.e.f.* 11.07.2013 to 31.03.2018 on contract to the complete satisfaction of respondent no. 1. The job of class IV safi karamchari is of permanent in nature. The petitioner was entitled to be regularized after completion of period of probation of one year. However, with the view to avoid payment of higher wages, the respondent no. 1 had appointed the petitioner from year to year on contract basis. The petitioner was not being paid wages as per the UGC norms and government rules applicable to respondent no. 1. Petitioner and other similarly situated employees had been representing, against lower wages being paid to them and non-regularization by respondent no. 1, to respondent no. 2, the UGC and the Hon'ble High Court. The Hon'ble High Court, in case CWPIL no. 167/2017 decided on 06.03.2018 had directed the respondent no. 1 to regularize the employees who had been in service on contract for several years. Respondent no. 1 had undertaken to regularize the services of his contractual employees and to pay them wages as per UGC and government rules but to utter shock and surprise of the petitioner, respondent no. 1 had terminated the services of the petitioner on 31.03.2018. The termination of the services of the petitioner was against the service rules of respondent no. 2 and respondent no. 1 had committed breach of its undertaking furnished before the Hon'ble High Court as such the petitioner is entitled to be reinstated in services with back wages. Petitioner has worked continuously for more than 240 days. Through this petition, the petitioner has prayed that the

services of the petitioner be reinstated with retrospective effect with all the consequential benefits, back wages and other services benefits.

3. Notice(s) of this application was sent to the respondents in pursuance thereof respondent no. 1 contested the claim by filing reply, in which it took preliminary objection of maintainability. Applicant/ petitioner was a contractual employee and after completion of the contract the applicant was relieved from the contractual services. Applicant has not come to this Court with clean hand and the application is not legal. It was claim that the requirement of the filing of direct application before this Court is to file a certificate from the conciliation officer that the conciliation remain pending on the demand notice of the applicant more than 45 days. An additional plea has also been taken that the applicant is gainfully employed. On merits, it was reiterated that the applicant was engaged as sweeper on contractual fixed terms basis vide letter of contract dated 30.09.2013, on the application of applicant dated 11.07.2013. Applicant joined the duty on 01.10.2013. It was disputed that the services of the applicant/ petitioner were permanent in nature. The vacancies in colleges and educational institutions depends on the number of the students of any particular academic year as such all the sweeper and house keepers are kept on fixed terms contractual basis. The regulation of UGC are applicable to the teaching staff as per the law and the Hon'ble Supreme Court of India has laid down that the teachers are not workers and they do not fall under the definition of a worker as per the Industrial Disputes Act, 1947. So far as the judgment of Hon'ble High court of Himachal Pradesh dated 06.03.2018 passed in CWPIL No. 167/2017, is concerned, the matter was decided by the Hon'ble High Court with the directions to the employees of the respondent to discuss the matter and their outstanding dues with the respondent. No one approached the respondent after the order was passed by the Hon'ble High Court on 06.03.2018, despite the fact that the respondent wrote letters to all the non-teaching staff/ employees including the applicant for making a claim of dues if any with the respondent. The contract of the services of the applicant came to an end on dated 30.03.2018 and as per the terms & conditions of the contract, the applicant was accordingly relieved and prayed for dismissal of the petition.

4. Respondent no. 2 also filed reply in which, it was averred that the respondent no. 2 does not deal with appointment of non-teaching posts in the private colleges affiliated to Himachal Pradesh University and the same are made by the management of the College concerned at their own level. It was claimed that the respondent no. 2 is not a necessary party for proper adjudication in this dispute. Respondent no. 2 claimed that the replying respondent only constitute a selection committee for a regular appointment of teaching faculty in the private colleges as per the provisions contained in the First Ordinances at chapter 38 Appendix-A, paragraph 38.5B(d) part-I and prayed for the dismissal of the claim petition.

5. Applicant filed rejoinder in which she 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 22.04.2022 :

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of Industrial Disputes Act, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . *OPP*.

2. Whether the claim petition 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 the Learned Counsel for the parties and have also perused the records of the case carefully.

9. 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	:	Yes
Relief	:	Application is answered in negative as per operative part of the Award.

REASONS FOR FINDINGS

Issues No 1.

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

11. To prove the averments as raised in the claim petition, the petitioner stepped into the witness box as PW-1 who led her evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the claim petition. During cross-examination she admitted that she had applied for the job of sweeper on 11.07.2013 vide mark R-1 which bears her signature. Appointment letter mark R-2 and joining report mark R-3 also bears her signatures. The nomination from mark R-4 also bears her signature. She also admitted that apology letter mark R-5 also bears her signature. She also admitted that she was engaged for five years. She admitted that after the period was over she was ousted from the respondent institution. She also admitted that she was transferred from Girls Hotel to Boys Hostel vide mark R-6. She also admitted that she had signed the renewal letters mark R-7 to mark R-10 and further admitted that she was issued notices mark R-11 to mark R-13 and tendered apology mark R-14. She also admitted that she was issued the relieving letter mark R-16. During cross-examination by the respondent no. 2 she admitted that she has no connection with HP University.

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

13. In rebuttal, the respondent examined Vikram Bhojia 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 tender in evidence application for employment Ex. RW-1/B, offer of appointment Ex. RW-1/C, joining report Ex. RW-1/D, nomination and declaration Ex. RW-1/E, attendance application Ex. RW-1/F, extension of contract Ex. RW-1/G, renewable of contract Ex. RW-1/H, daily attendance report Ex. RW-1/J, extension of contractual employment Ex. RW-1/K, transfer order Ex. RW-1/L, extension of contract Ex. RW-1/M, advance application Ex. RW-1/N, extension of contract Ex. RW-1/P, warning Ex. RW-1/Q, relieving Ex. RW-1/R, High Court Judgment Ex. RW-1/S.

14. During cross-examination, he showed ignorance that the petitioner was illiterate. He showed ignorance that petitioner was member of Dental Employees Union. He admitted that petitioner union had raised demand notice before the labour officer.

15. During cross-examination, by the respondent no. 2, he admitted that the non teaching staff is under the supervision and control of the respondent.

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

17. Coming to the claim in hand, the petitioner has filed the present claim alleging therein that she was engaged as Class-IV worker by respondent no. 1 on 11.07.2013 and she was regularly worked as such till 31.03.2018, on contract basis to complete satisfaction of respondent no. 1. She has further claimed that her services was permanent in nature, as such she is entitled for regularization after completion of period of probation of one year. She has further claimed that she has not been paid wages as per the UGC norms and government rules applicable to respondent no. 1.

18. So far as the claim of the petitioner is concerned that respondent no. 1 has taken a plea that petitioner was never engaged on regular basis rather she was engaged on contract basis and her contractual employment was not extended after the contract period was over and her services automatically stood dispensed.

19. Admittedly, no appointment letter for regular service was issued to the petitioner by the respondent college. She has also admitted her signature on Ex. RW-1/C which is offer of appointment to the petitioner on contract basis. These documents clearly establishes on record that the petitioner was engaged on contractual basis as per the terms of Ex. RW-1/C. Document Ex. RW-1/C clearly establish on record that total period of contract for which the petitioner was employed was five years which was to be calculated from the date of joining of the petitioner. Joining report was submitted by the petitioner vide Ex. RW-1/D on 01.10.2013. Petitioner has also admitted her signature Ex. RW-1/G vide which she had applied for extension of contract period. It is evident from the record that the contracts entered with the petitioner were renewed from time to time but the contract lastly executed/ extended expired on 30.03.2018 and thereafter the contract was not renewed. There is ample evidence on record to establish that petitioner was a contractual employee and was not on regular roles with the respondent.

20. Though, with the evidence, as available on record, it stands established that the petitioner was a workman as she was not doing any supervisory or managerial work, but she was required to prove that she was in regular service, which she has miserably failed to prove on record. Even if it is assumed that the petitioner has completed 240 days continuously since 2013 to 31.03.2018 that would not make her entitled to claim that she was in regular service, as number of days do 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) …….....”

21. 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.

22. Though, it was contended that the Hon’ble High Court of HP passed an order in CWPIL No. 167/2017 decided on 06.03.2018 had directed to respondent to regularize the employees who had been in service on contract for several years. The copy of said judgment has placed on record. The relevant paras of the judgment which read as under:

“**2. On the asking of the Court, the respondent institute, namely Bhojia Dental College & Hospital/ Bhojia Institute of Life Sciences/ Bhojia Institute of Nursing/ Bhojia Charitable Trust For Science Research & Social Welfare had endeavoured to have the dispute amicable resolved. For such purpose, a meeting was fixed in the College itself and as Mr. Rajish Maniktala, Advocate, informed us, none, including the letter petitioner came to attend the said meeting.**

3. As such, as pointed out by all the learned counsel appearing for the respective parties, including the learned Amicus Curiae, we are persuaded to close the present proceedings, leaving it open for the letter petitioner to approach the respondents/ authorities for payment of dues in accordance with law and redressal of any other grievances, if any. Mr. Rajnish Maniktala, Advocate, assures that with the receipt of such representation/ any of the employees approaching the management, appropriate action shall positively be taken expeditiously in accordance with law.”

The perusal of the aforesaid judgment establish that no such directions as claimed by the petitioner were issued in favour of the applicant to pay her regular scales as per the UGC Scales or to regularize her services.

23. In view of the discussion as made hereinabove, the petitioner is not entitled to any relief. The issue No.1 is answered in the negative and against the petitioner.

Issue No.2

24. The respondent has claimed that application is not maintainable, as the petitioner has directly approached the Court under Section 2-A of the Act, without filing a certificate of conciliation officer that the conciliation was pending on demand notice of the applicant for more than 45 days. Coming to the case in hand, the petitioner has failed to produce any record which could go to show that the petitioner had raised the demand notice before the Conciliation Officer. Even, the petitioner has not bothered to produce on record failure report nor there is any mention in the claim petition that demand notice was raised and after a lapse of 45 days, the present application has been filed by the petitioner to entitle her to file application under Section 2-A. There is no mentioned in the pleading of the petitioner that the conciliation proceeding were pending before the Labour Officer and petition under Section 2-A, has been filed after laps of 45 days. In absence of any document and pleadings to prove this fact it is held that the application has been filed directly to this court without complying with the mandate under Section 2-A of the Act, as such the petition is held to be non-maintainable as such issue no.2 is answered in affirmative.

Relief

25. 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.

26. 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 10th day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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 : 121 of 2016

Instituted on : 23.11.2016

Decided on : 12.12.2024

Mukesh Kumar Sharma, Senior Reporter/Spl. Correspondent s/o Shri Vidya Sagar Sharma, r/o Village Dangri, P.O. Manjyat, Tehsil Arki, District Solan, H.P. . . *Petitioner*.

Versus

1. The Management/Employer Editor-in-Chief Punjab Kesri Jalandhar Pucca Bagh Civil Line Jalandhar Punjab.

2. The Hind Samachar Ltd., Hind Samachar Street, Pucca Bagh Civil Line Jalandhar Punjab, through its Chief Managing Director. . . *Respondents.*

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. Vishal Bindra, Advocate

For the respondent : Sh. M. L. Sharma, 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 Editor-in-Chief Punjab Kesri Jalandhar Pucca Bagh Civil Line Jalandhar Punjab for not paying claim of arrears amounting to**

Rs. 3,76,000/- (Rs. Three lakh Seventy Six Thousand only) to Shri Mukesh Kumar Sharma, Senior Reporter/Spl. Correspondent s/o Shri Vidya Sagar Sharma, r/o Village Dangri, PO Manjyat, Tehsil Arki, District Solan, 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 appointed as Special Correspondent by the management/respondent on 1.3.2012. Petitioner was transferred from Punjab State Bureau at Chandigarh to State Bureau of Himachal Pradesh Shimla on 1.9.2013 without any written orders by the respondent. Petitioner was working with the respondent at Shimla under the supervision and control of its Head Office at Hind Samachar Street, Pucca Bagh, Civil Lines, Jalandhar, Punjab. Petitioner had worked with the respondent *w.e.f.* 1.3.2012 to 10.1.2014 continuously and on 10.1.2014, petitioner was compelled to leave the job. Respondent was paying the salary to the petitioner through his bank Account no. 912010020696581, of Axis bank Branch at Sector-35 Chandigarh. The wages and service conditions of the petitioner are governed by the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter to be referred as the Act) enacted by the Parliament. Respondent/ management is covered under the Act ibid and stand falls in the definition of Newspaper Establishment under the Act, whereas special correspondent (post of workman) in a newspaper establishment is a working journalist and covered under Section 2(c) and 2(f) of the Act. The Government of India, Ministry of Labour & Employment *vide* its notification dated 24.5.2007 constituted Wages Boards under Section 9 and 13(C) of the Act to review and determine the wages and service conditions of Newspaper employees. The wage board submitted its recommendations to the Government on 31.12.2010 and the Central Government accepted it vide its notification dated 11.11.2011 making the award enforceable subject to the decision of Hon'ble Supreme Court in writ petition CWP No. 246/2011 filed by the owners of the Newspaper Establishments against the Wage Board and its recommendations. The Hon'ble Supreme Court dismissed all the writ petitions filed against the wage board and its award *vide* judgment dated 7.2.2014 wherein the Hon'ble Supreme Court directed all the newspaper establishments that wages as per award of Majithia Wage Board shall be payable from 11.11.2011, the date when Central Government accepted and notified the recommendations of Majitha Wage Board. The Hon'ble Supreme Court further directed the managements to pay all the arrears upto March, 2014 to all the employees in four installments within one year from the date of its judgment and to pay revised wages from April, 2014. However, the respondent did not implement the recommendations of the Wage Board as directed by the Hon'ble Supreme Court. It is further averred that to refrain from the liability of new wages and arrears, the respondent had extracted the signatures of the employees on pre-typed formants forcibly on threats of their jobs and started claiming that the recommendations of the Majithia Wage Board Award are not applicable on it. The management/respondent never implemented previous wage board awards as per Government of India's notifications. The act of the respondent is in gross violation of Section 13 of the Act as the working journalists/non-journalists are entitled to wages at rates not less than those specified in order. The name of Editor-in-Chief of respondent is Shri Vijay Kumar Chopra who is running Punjab Kesri Group of newspapers under the ownership/chairmanship of a corporate company named "The Hind Samachar Ltd.," and to conceal the actual turnover/gross revenue of the newspaper establishments of Punjab Kesri Group/The Hind Samachar Ltd., the Director/CMD of the company Shri Vijay Kumar Chopra is also running five other companies and due to suspected financial activities of the respondent/management, it is very difficult to find out the actual balance sheet of the respondent. The average gross revenue of the respondent for the years 2009-10, 2010-11 and 2011-12 is more than 100 crores rupees and as per Majithia Wage Board the respondent/management is a class- III

category newspaper establishment (having gross revenue of ₹ 100 crores above and below ₹ 500 crores) whereas the post of petitioner was of special correspondent which falls under pay group 2 with pay scale of ₹ 18000-ARI (3%)-32600. The petitioner through this claim petition claimed for the arrears to the tune of ₹ 17,46,888/- including interest @ 24% per annum.

3. Notice of this claim was sent to the respondent in pursuance thereof the respondent filed reply in which preliminary objection of maintainability was taken. It was averred that the petitioner has filed the claim against Editor-in-Chief, Punjab Kesri Jalandhar, who is not responsible for day to day affairs of the organization. The Punjab Kesri is a mere name of product and have no legal entity as the same is owned and controlled by a public limited company "The Hind Samachar" incorporated under the Companies Act, 1956 as such the claim suffers from non-joinder of necessary parties. Apart from this, the preliminary objections regarding suppression of material facts and cause of action have also been taken. On merits, it is averred that in the absence of appointment letter, the appointment of petitioner as Special Correspondence is disputed. It was further denied that the petitioner was working with the respondent since 1.3.2012 to 10.1.2014. It was also denied that the respondent did not implement the recommendations of Majithia Wage Board and further denied that the conditions of Service of the petitioner is governed by the Act 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 11.11.2019 :

1. Whether the petitioner is entitled to the arrears of wages as per the revision effected in pursuance to the recommendations of Majithia Wage Board w.e.f. March, 2012 to 10.1.2014 as alleged? If so to what arrears the petitioner is entitled to? . . *OPP*.

2. Whether the petitioner has no cause of action against the respondent as alleged, if so its effect thereto? . . *OPR*.

3. Whether the claim is bad for non-joinder of necessary parties, as alleged, if so its effect thereto? . . *OPR*.

4. Whether the petition is not maintainable as the petitioner has suppressed material facts from this Court and the petitioner was not working with respondent as alleged, if so its effect thereto? . . *OPR*.

5. 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 and Shri Chander Mohan appeared as PW-2, whereas respondent examined Kultar Krishan, Manager as RW-1.

7. I have heard the Ld. Counsel for the parties 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. Not entitled to any relief.

Issue No. 2 : No.

Issue No. 3 : No.

Issue No. 4 : No.

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

REASONS FOR FINDINGS

Issue No.1

9. So far as issue no.1 is concerned, same is most contentious issue between the parties.

10. Onus to prove issue no.1 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 copy of e-mails dated 6.3.2012 and 24.7.2013 as Ex. PW-1/B, Ex. PW-1/C, e-mail record Ex. PW-1/D and affidavit under Section 65-B of Indian Evidence act Ex/ PW-1/E.

14. During cross-examination, he deposed that he was working as reporter with the respondent *w.e.f.* 1.3.2012 till Jan., 2014. He further deposed that initially he was appointed as reporter/special correspondent with the respondent at Chandigarh where he worked till September, 2013 on monthly salary of Rs. 15,100/- and thereafter he worked with the respondent at Shimla till Jan., 2014. He was getting Rs. 16,100/- as monthly salary when he left the job. He deposed that no appointment letter was issued to him by the respondent. Self-stated that he was interviewed at Jalandhar by Shri Aroosh Chopra, Director of respondent. He denied that he was not working with the respondent.

15. Shri Chander Mohan, Dy. Manager Axis Bank Kasumpati, Shimla appeared into the witness box as PW-2 and placed on record statement of bank account in the name of petitioner as Ex. PW-2/A. He also placed on record authentication letter Ex. PW-2/B. During cross-examination, he deposed that the amount was credited in favour of the petitioner in lieu of salary and cheque clearance is in favour of the petitioner.

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

17. In order to rebut the case of the petitioner, respondent examined Shri Kultar Krishan, Manager of respondent as RW-1 and tendered in evidence on record 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 authority letter Ex. RW-1/B.

18. During cross-examination, he denied that the reply was not filed at his instance. He showed ignorance that the petitioner was interviewed by Arush Chopra. He denied that the petitioner had worked with the respondent as special correspondent.

19. This is the entire evidence which has been led by the respondent in the present case.

20. 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 the petitioner has not produced any document to establish that the respondent management was having gross revenue of more than ₹ 100 crores and below ₹ 500 crores for the years 2009-10, 2010-11 and 2011-12 as claimed by the petitioner. No document in this regard has been produced on record nor any suggestion has been put to the witness of the respondent that that the average revenue of the respondent/management is more than ₹ 100 crores. The petitioner has though claimed that he was working as special correspondence with the respondent, however, no appointment letter in this behalf was produced. The petitioner has not established on record that in which category he falls as per the recommendations of the Majithia Wage Board. In the absence of any such proof, it is difficult for this Court to fix the petitioner and respondent in any of the categories as recommended by the Majithia Wage Board.

21. Apart from this, it is an admitted fact that the petitioner has resigned from the service in the year 2014 and has made this claim after much delay of publication of notification dated 11.11.2011. At the time when the petitioner had moved application before the Labour Officer, there was no relationship of employer and employee between the parties. The **Hon'ble High Court of Punjab & Haryana** in case titled as Canara Bank *Vs*. Presiding Officer, Central (1994) 106 PLR 375 has held as under:

> **8. In the case in hand, it is not disputed that the workman had submitted his resignation and once the management claims that the resignation become effective whereby the relationship of master and servant had come to an end, it was not open to the Labour Court to proceed on the basis that it continued to exist and compute the monetary benefits that may be due to him. Workman's own case is that he was not allowed to join duty and the justification shown by the management in not permitting to do so was that his resignation had become effective as he had acted upon the same.**

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.

22. 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 under 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) …….

23. 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."

24. 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**".

25. 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**.

26. 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**."

27. 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 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."

28. It is amply clear that the application was preferred by the petitioner under section 17(1) of the Act, but 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.

29. 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".

30. 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**.

31. 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.

32. 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, both these issues are decided against the petitioner**.**

Issues No.2, 3 & 4

33. All 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. To prove these issues no evidence has been led by the respondent which could go to show that as to how the petitioner has no cause of action against the respondent and the claim is bad for non-joinder of necessary parties and that the claimant has suppressed the material facts from this Court. In the absence of any evidence on record, all these issues are decided against the respondent.

Relief

34. In view of my findings on issues no.1 to 4, 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 12th Day of December, 2024.

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

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 14.12.2024

(Ref. No. 44/2021)

Suman Mittal

Versus

FM, M/s SSIPL, Pvt. Ltd. Bangran, Paonta Sahib

14.12.2024

Present: Sh. Nitin Mishra, Ld. Csl. for the petitioner

Sh. Prateek Kumar, Ld. vice Csl. for Sh. Navlesh Verma, Ld. Csl. for the respondent.

The matter was taken up in the pre Lok Adalat with the intervention of this Court, the matter i.e. reference under section 10 of the Industrial Disputes Act, 1947, received from the appropriate government vide notification No: 11-1/86(Lab) ID/2021/Paonta/Suman Government of Himachal Pradesh Department of Labour & Employment, dated 20th January, 2021, sent by the Joint Labour Commissioner for adjudication, which was registered before this Court as Reference no. 44/2021, stood amicably resolved between the parties. It has been stated by Sh. Kant Kapil, Deputy Manager, HR of respondent company that he has been duly authorized to make statement or give evidence in the industrial dispute pending before this Court. He further stated that the matter i.e. industrial dispute on account of receiving the reference from the appropriate government vide notification issued by the Joint Labour Commissioner, the matter stood amicably settled. As per settlement arrived between the parties, the respondent management is ready and willing to make payment of Rs. 2,10,000/- (Two lakh ten thousand only) towards her full & final settlement which shall be paid by the respondent to the petitioner on 14.12.2024 and nothing survived in the present reference. To this effect, his statement recorded separately.

Vide separate statement, Advocate for the petitioner has stated that the statement made by the respondent through their representative is acceptable to him. The matter stood amicably settled by way of settlement. A lump sum compensation of Rs. 2,10,000/- (Two lakh ten thousand only) towards full and final payment has been agreed to paid by the respondent to the petitioner on 14.12.2024 and the said arrangement is acceptable to the petitioner.

The matter was taken up today again, the learned counsel for the petitioner Sh. Nitin Mishra, has made separate statement that petitioner has received lump sum compensation of Rs. 2,10,000/- through cheque no. 005896 dated 11.12.2024 as per the settlement arrived between the parties on 10.12.2024.

Since, the matter stood amicably settled between the parties by way of amicable settlement and the respondent has paid lump sum compensation to the petitioner towards her full & final settlement arising out of the present reference, nothing survives in the present reference petition. The reference received from the appropriate government is answered accordingly. The statements of the parties shall form part and parcel of this award. 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:
14.12.2024.

Sd/-
(ATUL SHARMA),
Member.

Sd/-
(ANUJA SOOD),
Chairperson,
National Lok Adalat.

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 14.12.2024

(App. No. 30/2017)

Amit Kumar

Versus

M/s Universal Power Products Pvt. Ltd.

14.12.2024
Present: Sh. Ravinder Singh Jaswal, Ld. Csl. for petitioner

Sh. Prateek Kumar, Ld. vice Csl. for Sh. Rahul Mahajan, Ld. Csl. for the respondent.

The matter was taken up in the pre Lok Adalat with the intervention of this Court. It has been stated by Sh. Sandeep Sharma, authorized representative of respondent company that he has been duly authorized to make statement or give evidence in the matter, the matter stood amicably settled. As per settlement arrived between the parties, the respondent management is ready and willing to make payment of Rs. 70,000/- (Seventy thousand only) towards his full & final settlement which shall be paid by the respondent to the applicant within 15 days and nothing survived in the present application. To this effect, his statement recorded separately.

Vide separate statement, Advocate for the applicant has stated that the statement made by the respondent through their representative is acceptable to him. The matter stood amicably settled by way of settlement. A lump sum compensation of Rs. 70,000/- (Seventy thousand only) towards full and final payment has been agreed to paid by the respondent to the petitioner within 15 days and the said arrangement is acceptable to the petitioner.

The matter was taken up today again, the learned counsel for the petitioner Sh. Ravinder Singh Jaswal, has made separate statement that petitioner has received lump sum compensation of Rs. 70,000/- through RTGS dated 03.12.2024 as per the settlement arrived between the parties on 25.11.2024.

Since, the matter stood amicably settled between the parties by way of amicable settlement and the respondent has paid lump sum compensation to the applicant towards his full & final settlement arising out of the present application, nothing survives in the present application. The

application is answered accordingly. The statements of the parties shall form part and parcel of this award. 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:
14.12.2024.

Sd/-
(ATUL SHARMA)
Member.

Sd/-
(ANUJA SOOD)
Chairperson,
National Lok Adalat.

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 14.12.2024

(App. No. 12/2022)

Sukh Dev Tiwari

Versus

Beta Drugs

14.12.2024
Present: None for the petitioner

Sh. Prateek Kumar, Ld. vice Csl. for Sh. Rajeev Sharma, Ld. Csl. for the respondent.

The matter was taken up in the pre Lok Adalat with the intervention of this Court. It has been stated by Sh. Bhim Singh, authorized representative of respondent company that he has been duly authorized to make statement or give evidence in the matter, the matter stood amicably settled. As per settlement arrived between the parties, the respondent management is ready and willing to make payment of Rs. 50,000/- (Fifty thousand only) towards his full & final settlement which has been paid by the respondent to the applicant on 15.10.2024 and nothing survived in the present application. To this effect, his statement recorded separately.

Vide separate statement, Advocate for the applicant has stated that the statement made by the respondent through their representative is acceptable to him. The matter stood amicably settled by way of settlement. A lump sum compensation of Rs. 50,000/- (Fifty thousand only) towards full and final payment has been paid to the petitioner.

Since, the matter stood amicably settled between the parties by way of amicable settlement and the respondent has paid lump sum compensation to the applicant towards his full & final settlement arising out of the present application, nothing survives in the present application. The

application is answered accordingly. The statements of the parties shall form part and parcel of this award. 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:
14.12.2024.

Sd/-
(ATUL SHARMA),
Member.

Sd/-
(ANUJA SOOD),
Chairperson,
National Lok Adalat.

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 14.12.2024

(App. No. 59/2018)

Manohar Singh

Versus

Company Manager Balaji Power

14.12.2024
Present: Ms. Pooja, Ld. vice Csl. for Sh. Praksh Chand, Ld. Csl. for the petitioner

Sh. Prateek Kumar, Ld. vice Csl. for Sh. Rajeev Sharma, Ld. Csl. for the respondent.

The matter was taken up in the pre Lok Adalat with the intervention of this Court. It has been stated by Sh. Bhim Singh, authorized representative of respondent company that he has been duly authorized to make statement or give evidence in the matter, the matter stood amicably settled. As per settlement arrived between the parties, the respondent management is ready and willing to make payment of Rs. 1,25,000/- (One lakh twenty five thousand only) towards his full & final settlement which shall be paid by the respondent to the applicant within 15 days and nothing survived in the present application. To this effect, his statement recorded separately.

Vide separate statement, Advocate for the applicant has stated that the statement made by the respondent through their representative is acceptable to him. The matter stood amicably settled by way of settlement. A lump sum compensation of Rs. 1,25,000/- (One lakh twenty five thousand only) towards full and final payment has been agreed to paid by the respondent to the petitioner within 15 days and the said arrangement is acceptable to the petitioner.

The matter was taken up today again, the learned counsel for the petitioner Ms. Pooja, has made separate statement that respondent has already been paid to the petitioner, as per the settlement arrived between the parties on 25.11.2024.

Since, the matter stood amicably settled between the parties by way of amicable settlement and the respondent has paid lump sum compensation to the applicant towards his full & final

settlement arising out of the present application, nothing survives in the present application. The application is answered accordingly. The statements of the parties shall form part and parcel of this award. 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:
14.12.2024.

Sd/-
(ATUL SHARMA)
Member .

Sd/-
(ANUJA SOOD),
Chairperson,
National Lok Adalat.

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

Application No. : 144 of 2017

Instituted on : 21.11.2017

Decided on : 23.12.2024

Pawan Kumar, s/o Late Nardu Devi, r/o Village Jail, P.O. Jacch, Tehsil Gohar, District Mandi, H.P. . . *Applicant/ Petitioner.*

Versus

1. Labour and conciliation officer, New Himrus Bhawan, Circular Road, Shimla, H.P.
2. MC Shimla through its Commissioner, District Shimla, H.P.
3. Shimla Jal Prabandhan Nigam Limited (SJPNL), U.S. Club Forest Road Shimla, District Shimla, H.P. . . *Respondents.*

Application under Section 2(A) (2) of the Industrial Disputes Act, 1947

For the petitioner : Sh. R.S. Chandel, Adv.

For respondent No. 1 : Sh. Manoj Sharma, ADA

For respondent No. 2 : Sh. S.S. Roach, Adv.

For respondent No. 3 : Sh. Surinder Chauhan, Adv

AWARD

The present application has been filed under Section 2 A (2) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The case of the petitioner, as it emerges from the

statement of claim is that the petitioner/ claimant was initially engaged as Class-IV daily paid labourer with the respondent department in the year 2003. Thereafter, fictional breaks were given to the petitioner and finally his services were illegally terminated without complying with the mandatory provisions of the Act. It is claimed that during his service period fictional and artificial breaks were applied wrongly by the respondent but similarly situated persons and even the juniors were retained in the services. Some of the juniors namely Kewal Ram, Narayan Singh, Joginder, Hiralal, Thakurdass, Mehar Singh, Krishan Chand, Gopal Singh, Nand Lal, Sachin and Jiwan Kumar were engaged afresh and they are still working as beldar in I &PH Division No-II Chaura Madain, Shimla, thus the service of the petitioner was illegally terminated by retaining the juniors. Demand notice was raised by the petitioner which was received in the office of respondent no. 1 on 03.08.2016 and reply to the same was filed by the respondent to which the rejoinder was also filed by the petitioner. Petitioner applied for the record to shows that the juniors have been retained, but said record was not supplied to him. The petitioner has claimed that he worked with the respondent and has completed 240 days in a calendar year. Respondents have not complied with the provisions of Section 25-F, 25-G and 25-H of the Act. Petitioner through this claim has prayed that the order of termination be quashed and set-aside and he be engaged in service with all consequential benefits.

2. It is pertinent to mention here that an application under order 1 rule 10 was moved by the applicant to impleading MC Shimla as necessary party which application was allowed vide order dated 27.12.2018 and thereupon MC Shimla moved an application to implead Shimla Jal Prabandhan Nigam Limited (SJPNL) as a necessary party vide order dated 15.01.2020 Shimla Jal Prabandhan Nigam Limited (SJPNL) was implieded as party.

3. Notices of this petition has been sent to the respondents, despite ample opportunities to the respondents, the right to file reply was struck down by the Court vide order dated 13.09.2022.

4. Thereafter, the parties to the lis were directed to adduce evidence in support of this case.

5. I have heard the Ld. Counsel for the petitioner, Ld. ADA for respondent no. 1 and Ld. Counsel(s) for respondents no. 2 & 3 and also scrutinize the record of the case carefully.

6. The onus to prove, the allegations as set-up in the claim is heavily on the applicant/ petitioner, the applicant 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 application. He also tendered copy of demand notice mark PX-1, rejoinder mark PX-2, copy of judgment passed by the Hon'ble High Court mark PX-3.

7. During cross-examination, conducted by respondent no. 1, he admitted that he was not engaged by Labour-cum-conciliation officer Shimla. He admitted that demand notice was raised by him on 25.05.2016 and revised/ amended demand notice was raised on 03.08.2016. He also admitted that he has not sought any re-engagement or relief against the respondent no. 1. During cross-examination, conducted by respondent no. 2, he admitted that his junior Kewal Ram, Aryan Singh, Joginder, Hiralal Thakur Dass, Krishan Dass, Gopal Singh, Nand Lal, Sachin and Jiwan Kumar now works under respondent no. 3. He admitted that all the wages/ salary are administered now by SJPNL. During cross-examination, conducted by respondent no. 3, he denied that he was employed with MC Shimla during his termination. Self stated that he was employed with I& PH department.

8. This is the entire evidence which has been led by the applicant/ petitioner.

9. Whereas, respondent no. 2 has tendered in evidence judgment Ex. RX on record.

10. So far as, the case of the applicant is concerned, the applicant has claimed that he was engaged as a Class-IV by the respondent department in the year 2003 and thereafter he was given fictional breaks in his service and his services were illegal terminated in violation of mandatory provisions of the Act. Though, the applicant/ petitioner has claimed that he had completed 240 days in a calendar year but he has not bothered to show in which calendar year he had completed 240 days. Since, the applicant/ petitioner has not mention any date of his illegal termination, it is difficult to presume that is which year he had completed 240 days prior to his termination in a period of 12 preceding months. Respondents have not filed any reply to the claim petition but it is settled that applicant/ petitioner is required to stand on his own fact to prove the averments as made in the claim. No records have been called from the respondents department to establish that how many months/ days the applicant had completed prior to his alleged termination from service and when he was terminated from service and by which of the respondent. No record has been produced to show that the juniors of the petitioner were retained and they are still working with the respondent department. The petitioner has marked on record only demand notice and rejoinder.

11. The reply to the demand notice is also on record, though the same is not exhibited, but in the statement of claim petitioner has admitted that respondent had filed reply to demand notice and he thereafter filed rejoinder to the same. Perusal of this reply shows that respondent department had alleged that the petitioner had only worked 13 days in the year 2003 and he was engaged for petty repairs for the construction/ repair and after completion of the work his engagement automatically came to an end. Petitioner has not bothered to mention that how many days he had worked in the year 2003 nor there is any averments made in the which month/ year his services were terminated.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his illegal termination. There is not even single averments made by the petitioner either in his application/ claim or in the evidence which is led by way of affidavit as Ex. PW-1/A that in which year/ month his services were terminated and he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his illegal termination.

14. So far as the case of the petitioner is concerned, it is clear position on record from the pleadings of the petitioner and his statement of claim that he was engaged by the respondent department in the year 2003, but petitioner has raised demand notice in the year 2016 without disclosing in which month and year his services were terminated. The petitioner has not bothered to summon any record from the respondent department to establish that he had worked continuously and he had completed 240 days in a period of 12 calendar months prior to his termination. The evidence on record vis-à-vis, the statement of the petitioner there is no whisper that is which year his services were terminated.

15. Now, coming to the plea of the petitioner that there is also violation of the principle of "last come first go" which is envisaged under Section 25-G of the Act. The said section provides:

> ***"25-G. Procedure for retrenchment.—****Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she 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".*

16. It is claimed by the petitioner that after termination of his services, junior persons to him were retained by the respondent. The petitioner has also disclosed the name of some of the persons who are claimed to be juniors to him, but no record pertaining to appointment of his juniors has been produced on record. There is no evidence at all to establish that when the services of the petitioner were terminated and when the persons (juniors) as named in the petition were engaged and there is no evidence that they are still working with the respondents. In absence, of such evidence no violation of Section 25-G of the Act, is made out.

17. In view of my discussion made hereinabove, the petitioner has miserably failed to prove violation of Sections 2-b, 25-G and 25-H of the Act.

Relief

18. In view of my findings, discussed hereinabove supra, the claim filed by the applicant/ petitioner fails and is hereby dismissed. 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 23rd day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	20 of 2021
Instituted on	:	15.02.2021
Preliminary issue framed on	:	12.09.2023
Decided on	:	28.12.2024

Mahender Pal s/o Shri Ram Ram (Ram Lal), r/o Village & PO Samoh, Tehsil Jhunduta, District Bilaspur, H.P. . . *Petitioner*.

Versus

The Factory Manager/Occupier, M/s Himachal Energy Pvt. Ltd., Village Shavela, PO Jabli, Tehsil Kasauli, District Solan, HP. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C Bhardwaj, AR

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 12.09.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner is fair and proper? . . *OPR*.
2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 27.04.2011 when he was engaged as Junior Technician in the Testing Department of the respondent and he remained in the employment till 10.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to his active trade unionism as he was the Joint Secretary of the union and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was the Joint Secretary of the union which was a branch unit of the union i.e Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed *w.e.f.* 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheet served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he has denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not

pertaining to the petitioner. It is alleged that the petitioner made representation on 2.7.2016 to the management for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management on 27.8.2016 without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workmen were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited lateron when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statements of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management, but the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer, be declared null and void, inoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as junior technician nor it was disputed that his services were dismissed vide order dated 10.10.2019. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing

Orders of the company and by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings. Petitioner also cross-examined the witnesses of the respondent. Petitioner also examined his witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth his case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was Joint Secretary of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent had prejudice against the petitioner as such he was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that he required documents to file reply to the chargesheets. The documents which were asked by the petitioner were provided to him. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting a fair and proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the deducted provident fund had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in-house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principles of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 12.09.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner is fair and proper? . . *OPR*.
2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Vishal Panwar, Enquiry Officer as RW-1 and Mahender Kumar, Manager HR as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the order/Award

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Vishal Panwar, Enquiry Officer as RW-1, who led his evidence by way of affidavit Ex. PW-1/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record his appointment letter as enquiry officer Ex. RW-1/B, intimation letter Mark A, Chargesheet dated 4.9.2015 Ex. RW-1/C, chargesheet dated 11.9.2015 Ex. RW-1/D, chargesheet dated 22.9.2015 Ex. RW-1/E, enquiry proceedings Ex. RW-1/F, enquiry report in Hindi Ex. RW-1/G, copy of certified standing order in Hindi Ex. RW-1/H and standing order Ex. RW-1/J.

11. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders, as per the principles of natural justice and fair hearing. He denied that he had not gone through the certified standing orders and conducted the inquiry without following the procedure mentioned therein. He admitted that as per the certified standing orders clause 27-> the petitioner was entitled to engage a defense assistant of his own choice. He deposed that he received application in this regard and the reply of the same was called from the management who had objected the proposed name of Sh. J.C. Bhardwaj on the ground that he had led the strike of the workers, as such he should not be appointed as defence assistant. He further deposed that he conducted the enquiry as per the certified standing order and not at the directions of the management. He had taken reply from the management as per the procedure and then he had decided the application of the petitioner in this regard. He admitted that it is not written in the standing orders that Sh. J.C. Bhardwaj, AR cannot be appointed as defence assistant. He denied that he was bound to conclude the enquiry within 3 months. He denied that enquiry report has been prepared at the instance of the management.

12. The other witness examined by the respondent is Mahender Kumar, Manager HR of respondent company, who stepped into the witness box as RW-2 and led his evidence by way of affidavit Ex. RW-2/A, which is just a reproduction of the averments as made in the reply. He also placed on record resolution Ex. RW-2/B, copy of certified standing orders Ex. RW-2/C, details of suspension allowance paid to the workman Ex. RW-2/D, bank details Ex. RW-2/E, second show cause notice Ex. RW-2/F along with copy of enquiry report Ex. RW-1/G, Hindi translation of second show cause notice RW-2/G, reply to show cause notice Ex. RW-2/H, dismissal letter in English Ex. RW-2/J and its Hindi version Ex. RW-2/K and letter of settlement of amount mark-Y.

13. During cross-examination, he deposed that he was appointed by the respondent management in the month of September, 2023 and he has no personal knowledge about the strike. He admitted that no document was annexed or enclosed with the chargesheet which was supplied to the workman in Hindi. He admitted that similar chargesheet was also served to some other workers and they were taken back. Self-stated that the charges against some of the workers were minor in nature as such they were taken back. He denied that petitioner was not allowed to put up his defence properly with the assistance of defence assistant of his choice. He admitted that till 4 months of suspension, subsistence allowance was not paid to the petitioner. Self-stated that thereafter the subsistence allowance was paid to the petitioner. He admitted that second show cause notice was replied by the worker. He denied that no opportunity to file appeal was granted to the workman and he was dismissed straightway.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2019 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and he was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length and to some of the witnesses more than 100 questions have been put by the petitioner during cross-examination. Not only this, the delinquent petitioner was afforded full opportunity to lead his own evidence in defence.

18. At the very inception it would appropriate to note that the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act

or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation Vs. Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 286 and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal Vs. General Manager-II and appointing authority State Bank of India and ors. 2016 LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-1/F.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-1/F that the petitioner Mahender Pal had written letter dated 7.11.2015 (page no.3 of the enquiry proceedings marked with red ink) vide which he had stated that after the strike was over, he had received the suspension letter dated 4.9.2015 and had also received chargesheets dated 11.9.2015 and 22.9.2015, but all these documents were in English and he had requested that he be provided Hindi version of these documents. Apart from this, he had requested that Hindi version of Certified Standing Orders be provided to him. He further made request that if any other authentic document is annexed with the chargesheet copy of the same be provided to him in Hindi and also prayed that subsistence allowance *w.e.f.* 4.9.2015 till date be paid to him. During enquiry proceedings dated 12.12.2015 (page-5), the enquiry officer had recorded that the delinquent has no objection regarding the appointment of enquiry officer and the procedure to be adopted in the enquiry has been explained to the parties. On the same day, directions were issued to the management to provide Hindi version of the chargesheets and standing orders to the delinquent. It is evident from the enquiry proceedings dated 14.5.2016 (Page 22) that the Hindi version of chargesheets as well as standing orders were supplied to the petitioner and the petitioner had prayed time to file reply of the same. At that time the petitioner had not raised any objection that due to non-supply of particular document, he was unable to file the reply to the chargesheets. It is evident from enquiry proceedings dated 2.7.2016 (Page 29), the petitioner had produced certain documents which were taken on record and the copies of these documents were supplied to the management representative who had sought time to put up their explanation in this regard. Apart from this, the list of witnesses and their statements were also produced and copies thereof were supplied to the petitioner and all the proceedings were duly signed by the management representative as well as by the petitioner. During these proceedings, the petitioner had not raised any objection that the documents were not supplied to him due to which he could not file complete reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is

concerned, the chargesheets have been placed on record as Ex. RW-1/C, Ex. RW-1/D and Ex. RW-1/E. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the Standing Orders are concerned, it has come in the enquiry proceedings that the copy of the same was demanded by the petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-**cum-**Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner and there is no averments in the petition that the documents which were filed by him during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings (at page No. 100) that the documents which were found mentioned in the statement of witnesses were demanded by the petitioner in Hindi and the enquiry officer had issued directions to the representative of the respondent to supply the documents to the petitioner and further directed that the documents which were in English be translated and copy thereof be provided to the petitioner. It is evident from the enquiry proceedings (at page no. 129) that with the permission of enquiry officer, management had moved an application to produce some documents in the statement of Shri Anil Saklani and the copies thereof were supplied to the petitioner. On demand of the petitioner directions were issued to the respondent by the enquiry officer to supply the Hindi version of documents which were in English. It has come in the proceedings that the management had showed inability to get the Hindi versions of the Court Orders and other documents which were in English, as such it was held in the enquiry proceeding dated 27.09.2018 that if the Hindi Version of these documents is not supplied to the petitioner, the said documents would not be read in enquiry. During cross-examination of witness Anil Saklani, a question was put to this witness by the petitioner that the documents which were in English would not be read in evidence and this question was answered in affirmative by the witness Anil Saklani. Thus, non-supply of Hindi version of said documents has not caused any prejudice to the case of the petitioner.

23. It would be appropriate at this stage to point out here that the petitioner has not stepped into the witness box to state his case on oath that which material document was not supplied to him and what prejudice was caused to him due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27(i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**

It was contended by the Ld. AR for the petitioner that the petitioner had made a written request *vide* letter dated 2.7.2016 for the appointment of Shri J.C Bhardwaj who was President of AITUC as his defence assistant as per the provisions of Certified Standing Orders, but such permission was declined as such great prejudice has been caused to the case of the petitioner and he could not defend his case properly.

25. Admittedly, during the course of enquiry proceedings, the petitioner had made a request for appointment of Shri J.C Bhardwaj as his defence assistant. It is evident from the record

that after making of request by the petitioner for the appointment of Shri J.C Bhardwaj as his defence assistant, the respondent company had objected to such application vide letter dated 27.8.2016 on the ground that S/Shri J.C Bhardwaj and Anoop Prashar were leading the strike of the workers and apart from that Shri J.C Bhardwaj and Anoop Prashar were appearing before the Labour Commissioner, Labour Officer as well as before the Labour Court and they are well conversant with the legal procedure, whereas the management representative was not acquainted with legal procedure as such the prayer was made that they be not appointed as defence assistant of the petitioner. It is evident that after objection was raised, though the enquiry officer had not accepted the prayer of the petitioner to appoint S/Shri J.C Bhardwaj as defence assistant of the petitioner, but it was made clear that the petitioner can seek assistance of any other co-worker and any other person and even an opportunity was granted to the petitioner to engage any other co-worker or outsider as his defence assistant and the matter was adjourned. Thereafter, the petitioner has not produced any other co-worker or outsider as his defence assistant.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd. Banglore *Vs.* S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **" 4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**
>
> **5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd.. In that case it was held that—**
>
> **"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."**
>
> **6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore**

allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank Vs. Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

"6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others vs M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. vs Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. vs Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. vs Maharashtra General Kamgar Union & Others [1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself**.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd., and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. *vs.* Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be

represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal**-cum-**Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Moreover, an order was passed by the enquiry officer whereby the objection of the management was accepted that Shri J.C Bhardwaj and Anoop Prashar could not be appointed as defence assistant of the delinquent/petitioner because they had led the strike of the workers and they are practicing before the Labour Court and are appearing before the Labour Commissioner and Labour Officer and are law knowing persons. The petitioner was granted opportunity to engage any other co-worker or outsider as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witness Shri Anil Saklani were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, it has come in the enquiry report that the documents which were supplied to the petitioner in English would not be read in evidence. Otherwise also witness Shri Anil Kumar Saklani was cross-examined at length by the petitioner and as many as 105 question were put to this witness during cross-examination. The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined his witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has not stepped into the witness box to state that he was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and he was given full opportunity to cross-examine the witnesses of the respondent management and to lead his evidence in defence. The petitioner has put more than 100 questions to the management witness(es) and now it does not lie in the mouth of the petitioner

to say that he was not afforded fair opportunity to defend his case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead his evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will ipso facto render the order of removal invalid.

16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.

17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was cause to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner has not stepped into the witness box to prove any such prejudice which is alleged to have been caused to him on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 12.12.2015 (at page no.5).

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as

M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal-II Gurgaon and another, 2014-LLR 931. So far as this contention is concerned, if the statement of witness/es especially Shri Anil Saklani is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory on 3.7.2015 and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of Anil Kumar Saklani and that of Nitin Kumar and Parveen Tomar clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from proceedings dated 27.9.2018 wherein it has been recorded that for last 6-7 months mother of enquiry officer was suffering from brain stroke/paralytic attack and he had to take her for medication to hospital and look-after her and he could not conclude the enquiry promptly. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also it is settled that the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should

be up held or interfered with by exercising the powers under section 11-A of the Act. Order to continue.

41. Let the parties be heard on quantum of punishment.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal vide its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scapegoat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that it has come in the statement of respondent witness Mahender Kumar (RW-2) that similar chargesheets were also served to other workers and they were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scapegoat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is

just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking Vs. Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd., *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite *Vs.* N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd., *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this

Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**
>
> **10. The above said agreement will be valid for a period of three years from the date of signature *i.e* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.**

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd., *Vs.* Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., *Vs.* Workers of Herbertson Ltd., 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., Vs. Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the

settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC Vs. MG Vittal Rao (2012) 1 SCC 442, Kanhaiyalal Aggarwal *Vs.* Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, Vide Binny Ltd., Vs. Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. v. Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty v. Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal v. Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., Vs. Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another Vs. Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore Vs. Prem Singh**. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other

workers, but they were lightly let go. It is settled position of law that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala *Vs.* General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan *Vs.* SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	21 of 2021
Instituted on	:	15.02.2021
Preliminary issue framed on	:	12.09.2023
Decided on	:	28.12.2024

Hemant Kumar, s/o Sh. Janki Ram, r/o V.P.O. Kot, Via Jubbar, Tehsil Kasauli, District Solan, HP. . . *Petitioner*.

Versus

The Factory Manager/Occupier, M/s Himachal Energy Pvt. Ltd., Village Shavela, P.O. Jabli, Tehsil Kasauli, District Solan, HP. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C Bhardwaj, AR

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 12.09.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 01.05.2006 when he was

engaged as Senior Operator in the Moulding Department of the respondent and he remained in the employment till 10.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to his active trade unionism as he was the active member of the union and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was the active member of the union which was a branch unit of the union i.e Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed w.e.f. 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in the connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheets served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he has denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workman were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen has stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited later on when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work by the petitioner as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer

committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statements of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management while the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, inoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as senior operator nor it was disputed that his services were dismissed vide letter dated 10.10.2019. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings and the petitioner also cross-examined the witnesses of the respondent. Petitioner also examined his witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth his case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent had prejudice against the petitioner as such he was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection he required documents to file reply to the chargesheet. The documents which were asked by the petitioner were provided to him. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting an fair and

proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principles of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 12.09.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR.*

2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined Sh. Mahender Kumar, Manager HR as RW-1 and Ms. Aashima Sharma, Enquiry Officer as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the order/Award

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Sh. Mahender Kumar, Manager HR of respondent company, who stepped into the witness box as RW-1 and 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 copy of board resolution Ex. RW-1/B, copy of certified

standing orders Ex. RW-1/C, details of suspension allowance paid to the workman Ex. RW-1/D and bank details in this regard Ex. RW-1/E, second show cause notice Ex. RW-1/F along with copy of enquiry report Ex. RW-1/G, letter dated 05.10.2019 along with the enquiry report in Hindi Ex. RW-1/H, copy of letter dated 07.10.2019 Ex. RW-1/J, Hindi version of second show cause notice Ex. RW-1/K, dismissal letter in English Ex. RW-1/L and its Hindi version Ex. RW-1/M and letter of settlement of account is mark-Y.

11. During cross-examination, he deposed that he was appointed by the respondent management in the month of September, 2023 and he has no personal knowledge about the strike. He admitted that no document was annexed or enclosed with the charge sheet which was supplied to the workman in Hindi. He admitted that he was not an enquiry officer as such he cannot say whether the enquiry was conducted as per the principles of natural justice. Enquiry was conducted as per the certified standing orders. He admitted that similar charge sheet was also served to some other workers and they were taken back. Self-stated that the charges against some of the workers were minor in nature as such they were taken back. He showed ignorance that the petitioner was terminated from service as he was office bearer of the union. He showed ignorance that repeated letters were written by the worker to the management to speed up the enquiry proceeding. He admitted that the enquiry is conducted after the chargesheet is delivered to the delinquent. He denied that petitioner was not allowed to put up his defence properly with the assistance of defence assistant of his choice. He admitted that till 4 months of suspension, subsistence allowance was not paid to the petitioner. Self-stated that thereafter the subsistence allowance was paid to the petitioner. He admitted that second show cause notice was replied by the worker. He denied that no opportunity to file an appeal was granted to the workman and he was dismissed straightway.

12. The other witness examined by the respondent is Ms. Aashima Sharma, Enquiry officer as RW-2, who led her evidence by way of affidavit Ex. RW-2/A, wherein she has deposed that she was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. She has stated that she conducted the enquiry in fair and proper manner and as per the principles of natural justice. She placed on record chargesheet in English dated 4.9.2015 Ex. RW-2/B and its Hindi version Ex. RW-2/C, chargesheet in English dated 11.9.2015 Ex. RW-2/D and its Hindi version Ex. RW-2/E, chargesheet in English dated 22.9.2015 Ex. RW-2/F and its Hindi version Ex. RW-2/G, letter dated 01.10.2015 regarding appointing enquiry officer Ex. RW-2/H, entire enquiry proceedings Ex. RW-2/J, newspaper cutting mark-RX, enquiry report in English Ex. RW-2/K and its Hindi translation Ex. RW-1/L, copy of certified standing order Ex. RW-2/M and its English version Ex. RW-1/C.

13. During cross-examination she deposed that she had conducted the enquiry as per the certified standing orders, as per the principles of natural justice and fair hearing. She admitted that she had mentioned in the orders passed on first day in the enquiry that the enquiry is being conducted under the model standing orders. She deposed that she had not gone through the certified standing order before starting the enquiry proceedings. Self stated that the certified standing orders were provided to her on the second day of hearing. She admitted that as per certified standing orders, delinquent was entitled to engage a defence assistant on his own choice. She admitted that petitioner had moved an application to bring his own defence assistant from outside. She admitted that she had mentioned in Ex. RW-2/H at page no. 7 that the petitioner cannot bring any outsider to his defence assistant however, he can bring outsider as a witness. She denied that by denying opportunity to the petitioner to bring defence assistant from outside she had violated the provisions of certified standing orders. She admitted that petitioner had disclosed during the course of enquiry that management had not provided him the copy of chargehseet. She showed ignorance that the management had not supplied the copy of chargesheet to the petitioner before appointing her as an enquiry officer. She denied that the respondent had changed their management representative

frequently. She admitted that no documents were annexed with the chargesheet which was supplied to the petitioner. Self stated that the documents were supplied to the petitioner later on. She denied that she had mentioned in her proceedings that the petitioner could only examine the documents. She deposed that Sh. Anil Saklani had only appeared once as a management representative, as management representative Ms. Meenakshi who was appearing in the enquiry on behalf of the management was ill. She admitted that Sh. Anil Saklani was cited and examined as a management witness. She denied that she conducted the enquiry as per the directions of the management. She admitted that no witness had produced any complaint of any officer of the management or customer who was restrained by the petitioner. Self stated that Sh. Anil Saklani and Sh. Lalit Sharma had made statements in this regard. She showed ignorance that letters sent to the Labour Commissioner and other Authorities were not scribed by Anil Saklani. She denied that enquiry proceeding Ex. RW-2/J and enquiry report Ex. RW-2/K have not been prepared by her. She denied that the enquiry report is not inconformity with the statements of the witnesses. Enquiry was delayed as some time she was not available, sometimes the management representative was absent and sometimes petitioner refuse to cross-examine the witnesses. Petitioner thrice refused to cross-examine the management witnesses which fact is mentioned at page no. 45, 90 & 94. She denied that the report is imaginary.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2009 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and he was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length and to some of the witnesses more than 7 questions have been put by the petitioner during cross-examination. Not only this, the delinquent petitioner was afforded full opportunity to lead his own evidence in defence.

18. At the very inception it would appropriate to note that the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and

relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation Vs. Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 286 and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K. Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal Vs. General Manager-II and appointing authority and Union of India and ors *Vs.* 2016 LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-2/J.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-2/J that the enquiry was taken up on 26.12.2015 on which date Ms. Minaxi had appeared as presenting officer and Hemant Kumar worker had also appeared. It is evident from the proceedings dated 26.12.2015, the petitioner had not raised any objection qua the appointment of the enquiry officer. It was also disclosed to the petitioner that the proceedings would be taken up as per the principles of natural justice. The procedure of enquiry was explained to both the parties. The petitioner was also informed that he can bring a defence assistant to defend his case. The petitioner had stated that he had received the copy of chargesheets dated 4.11.2015, 11.9.2015 and 22.9.2015 and had requested the enquiry officer to provide him Hindi version of the same. Accordingly, enquiry officer directed the management to supply the Hindi version of chargesheets and standing orders to the petitioner. It is also evident from the enquiry proceedings Ex. RW-2/J that Hindi version of the chargesheets as well as standing orders were supplied to the petitioner. During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to him due to which he could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-2/B, Ex. RW-2/D and Ex. RW-2/F. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the Standing Orders are concerned, it has come in the enquiry proceedings that the copy of the same was demanded by the

petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner and there is no averments in the petition that the documents which were filed by him during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the list of the witnesses was supplied to the petitioner which was received by him on 07.05.2016, the statements were also supplied to the petitioner in advance so as to enable him to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to him rather after the Hindi version of document sought by him, he did not raise any objection qua any document which were not supplied to him.

23. It would be appropriate at this stage to point out here that the petitioner has stepped into the witness box to state his case on oath that which material document was not supplied to his and what prejudice was caused to his due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27(i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**

It is contended by the learned AR for the petitioner that petitioner had made a request vide letter dated 28.01.2016 that he be allowed to produce defence assistant but said permission was denied.

25. Admittedly, during course of enquiry the petitioner had made a request to produced his defence assistant, it is evident from letter dated 28.01.2016. It is evident from letter dated 07.05.2016 that the manager had objected for the appointment of any union leader or outsider be appointed as a defence assistant. However, they had no objection if a co-worker appointed as a defence assistant. The enquiry officer had agreed with the objection raised by the respondent but thereafter no co-worker or any defence assistant was produced by the petitioner to defence his case. The matter was adjourned and thereafter listed for evidence of the respondent, but at no point of time petitioner however made request that Sh. J.C. Bhardwaj be appointed as defence assistant to defend her case. Thus, it is not open for the petitioner to agitate that he was not allowed a defence assistant of his own choice or that Sh. J.C. Bhardwaj was not appointed as a defence assistant for the petitioner.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be**

represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd. Banglore *Vs.* S. Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **" 4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**
>
> **5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd.. In that case it was held that—**
>
> **"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."**
>
> **6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".**

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

> "6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and**

standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others *vs* M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. vs Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. vs Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. *vs* Maharashtra General Kamgar Union & Others [1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd., and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. *vs.* Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon Vs. Presiding Officer, Industrial Tribunal-**cum-**Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. The petitioner was granted opportunity to engage any other co-worker as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Devinder Kumar were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, Shri Anil Saklani was cross-examined at length by the petitioner The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined his witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has not stepped into the witness box to state that he was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and he was given full opportunity to cross-examine the witnesses of the respondent management and to lead his evidence in defence. The petitioner cross-examined the management witness(es) and now it does not lie in the mouth of the petitioner to say that he was not afforded fair opportunity to defend his case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead his evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

> **15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.**
>
> **16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.**
>
> **17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.**

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner was not stepped into the witness box to prove any such prejudice which is alleged to have been caused to him on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 26.12.2015.

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal-II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Anil Saklani is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of Anil Saklani and Lalit clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed

on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings Ex. RW-1/J. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment. Order to continue.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal vide its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The

respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scapegoat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that it has come in the statement of respondent witness Mahender Kumar (RW-1) that similar chargesheets were also served to other workers and they were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scapegoat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen Vs. Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking *Vs.* Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner *vide* chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as

U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd., *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite *Vs.* N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd., *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**
>
> **10. The above said agreement will be valid for a period of three years from the date of signature *i.e.* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.**

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd., Vs. Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., *Vs.* Workers of Herbertson Ltd., 1976-4 SCC 736**, **State of Uttranchal Vs. Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., Vs. Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union

and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed *vide* settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC *Vs.* MG Vittal Rao (2012) 1 SCC 442, Kanhaiyalal Aggarwal Vs. Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, Vide Binny Ltd., *Vs.* Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. v. Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty v. Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal v. Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., Vs. Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another Vs. Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore Vs. Prem Singh**. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner

by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala Vs. General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In

support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	22 of 2021
Instituted on	:	15.02.2021
Preliminary issue framed on	:	12.09.2023
Decided on	:	28.12.2024

Balbir s/o Sh. Kundan, r/o Village Sherla, P.O. Jabli, Tehsil Kasauli, District Solan, H.P.
. . *Petitioner*.

Versus

The Factory Manager/Occupier, M/s Himachal Energy Pvt. Ltd., Village Shavela, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C Bhardwaj, AR

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 12.09.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 19.04.2006 when he was engaged as Junior Operator in the Packing Department of the respondent and he remained in the employment till 11.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal, ex parte and partial domestic enquiry due to his active trade unionism as he was the active member of the union and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was the active member of the union which was a branch unit of the union i.e Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed *w.e.f.* 11.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheets served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he has denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as the enquiry was conducted behind the back of the petitioner and even as per the ex parte enquiry conducted by the enquiry officer none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. Initially Ms. Meena Pathania was appointed as an enquiry officer, but thereafter Shri Prince Chauhan was appointed as an enquiry officer, who intimated the parties about the next date of enquiry which was proposed to be held on 15.12.2018 on which date he fixed the date of enquiry as 5.01.2019, but the enquiry officer

did not turn up and intimated the next date as 12.1.2019 on which date the petitioner was not allowed to ask some question by the enquiry officer which fact was apprised by the petitioner to the management *vide* letter dated 14.1.2019 and *vide* letter dated 31.5.2019, the petitioner had intimated the management that enquiry officer had refused to conduct his enquiry as such thereafter the petitioner was never intimated the date of enquiry. The petitioner again wrote a letter to the management on 2.6.2019 wherein he requested to complete his enquiry immediately but he was already proceeded ex-parte without any intimation. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workman were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen has stated that anyone was instigated to go on strike by the petitioner. It was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited lateron when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work by the petitioner as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statement of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry as a legal practitioner was engaged as an enquiry officer by the management while the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, inoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice and the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the services of the petitioner were dismissed vide letter dated 11.10.2019. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer Ms. Meena Thakur was appointed by the respondent, but she expressed her inability to conduct the enquiry as such Shri Prince Chauhan was appointed as an enquiry officer by the respondent, who conducted the domestic enquiry in respect of charges levied

vide charge sheets and 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner initially participated in the enquiry, but thereafter despite having the knowledge about the date of enquiry, intentionally and deliberately failed to participate in the enquiry, hence, he was proceeded against ex parte and an ex-parte enquiry was conducted by the enquiry officer. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 11.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was Member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent was prejudiced against the petitioner as such he was served with dismissal order dated 11.10.2019. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting a fair and proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is a in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principles of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 12.09.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner is fair and proper? . . *OPR*.

2. Relief:

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Mahender Kumar, Manager HR as RW-1, M.s Meena Thakur, Enquiry officer as RW-2 and Shri Prince Chauhan, Enquiry officer as RW-3. Whereas in rebuttal the petitioner has examined himself as PW-1.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the Award/order

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Mahender Kumar, Manager HR of the respondent company as RW-1, who stepped into the witness box as RW-1 and 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 resolution Ex. RW-1/B, copy of certified standing orders Ex. RW-1/C, details of suspension allowance paid to the workman Ex. RW-1/D, bank details Ex. RW-1/E, second show cause notice Ex. RW-1/F along with copy of enquiry report Ex. RW-1/G, letter dated 7.10.2019 along-with the enquiry report in Hindi Ex. RW-1/H, dismissal letter in English Ex. RW-1/J and its Hindi Version Ex. RW-1/K and letter of settlement of account Mark Y.

11. During cross-examination, he deposed that he was appointed by the respondent management in the month of September, 2023 and he has no personal knowledge about the strike. He admitted that no document was annexed or enclosed with the charge sheet which was supplied to the workman in Hindi. He admitted that similar charge sheet was also served to some other workers and they were taken back. Self-stated that the charges against some of the workers were minor in nature as such they were taken back. He denied that petitioner was not allowed to put up his defence properly with the assistance of defence assistant of his choice. He admitted that till 4 months of suspension, subsistence allowance was not paid to the petitioner. Self-stated that thereafter the subsistence allowance was paid to the petitioner. He admitted that second show cause notice was replied by the worker. He denied that no opportunity to file an appeal was granted to the workman and he was dismissed straightway.

12. Ms. Meena Thakur, enquiry officer appeared into the witness box as RW-2 and tendered in evidence her affidavit Ex. RW-2/A, wherein she has deposed that vide letter dated 1.10.2015, she was appointed as an enquiry to conduct the enquiry in respect of charges levied against the petitioner vide chargeshets dated 4.9.2015, 11.9.2015 and 22.9.2015. After her appointment as an enquiry officer, vide letter dated 13.10.2015 she intimated the date, time and place for conducting the enquiry to petitioner as well as respondent. On 12.12.2015, the entire enquiry procedure was explained to both the parties. The reply was submitted by the petitioner to chargesheets on 9.2.2016. She conducted the enquiry till 1.2.2017 and thereafter on account of personal reasons, she expressed her inability to conduct the domestic enquiry. The enquiry was conducted by her as per the principles of natural justice, fair hearing and the procedure prescribed under the certified standing orders. She also placed on record letter Mark RX, chargesheet dated 4.9.2015, in English, Ex. RW-2/B and its Hindi version Ex. RW-2/C, chargesheet dated 11.9.2015 Ex. RW-2/D (in English) and its Hindi version Ex. RW-2/E, chargesheet dated 22.9.2015 Ex. RW-

2/F 9in English) and its Hindi version Ex. RW-2/G, enquiry proceedings which were conducted by her Ex/ RW-2/H, newspaper cutting Mark RY.

13. During cross-examination, she admitted that she had mentioned in her proceedings Ex. RW-1/H that she would be conducting enquiry as per the model standing orders, natural justice and fair hearing. She admitted that the worker had submitted the reply to chargehseets during the pendency of enquiry proceedings. She denied that the workman had not received any letter for appearance in the enquiry proceedings on the first date of hearing fixed for 19.10.2015. She admitted that the petitioner had moved an application to allow him to engage a defence assistant of his own choice. Self-stated that the company had objected to such application and thereafter she had decided that application vide proceedings dated 20.8.2016. She denied that she was guiding and favouring the management. She admitted that no document was supplied to the petitioner along-with chargesheet. She denied that she had conducted the enquiry at the directions of management representative.

14. Shri Prince Chauhan, Enquiry officer appeared into the witness box as RW-3 and tendered in evidence his affidavit Ex. RW-3/A, wherein he deposed that vide letter dated 10.12.2018, he was appointed as an enquiry to conduct the enquiry in respect of charges levied against the petitioner vide chargeshets dated 4.9.2015, 11.9.2015 and 22.9.2015 as Ms. Meena Thakur had expressed her inability to conduct the enquiry on account of her personal reasons. After his appointment as an enquiry officer, he asked the petitioner that whether he wants to start the enquiry from the very beginning or from the stage where Ms. Meena Thakur had left the enquiry and the petitioner submitted that the enquiry be started from the stage where Ms. Meena Thakur had left the enquiry. The petitioner participated the enquiry proceedings till 1.6.2019 and thereafter he failed to participate in the enquiry as such he was proceeded against ex-parte. He conducted ex-pate enquiry against the petitioner in accordance with the principles of natural justice, fair hearing and the procedure prescribed under the certified standing orders. He also placed on record letter dated 10.12.2018 Ex. RW-3/B, enquiry proceedings Ex. RW-3/C, enquiry report Ex. RW-3/D and certified standing orders Ex. RW-1/C.

15. During cross-examination, he admitted that the petitioner had made a complaint against him to the management with allegations that he was not recording the questions put by the petitioner and was recording the evidence at his own and that the petitioner had made a written request for the change of enquiry officer. He denied that he used to extend threats to the petitioner that he would record evidence at his own. He denied that he had prepared the enquiry report which is not in consonance with the statements of the management witnesses. He also denied that he had conducted the enquiry in violation of the provisions of certified standing orders.

16. This is the entire evidence which has been led by the respondent.

17. In order to rebut the evidence of the respondent, 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 averments as made in the claim petition.

18. During cross-examination, he admitted that he had orally submitted before the enquiry officer that the charge sheet be supplied to him in Hindi. He further admitted that the enquiry was conducted in Hindi. He also admitted that the initial enquiry was conducted by Ms. Meena and he had appeared in the enquiry on 12.12.2015 and had also put his signatures on the enquiry proceedings Ex. RW-2/H. He admitted that he had written letter dated 17.11.2017 and he was present during enquiry proceedings on 09.02.2016. He admitted that on his demand the enquiry officer Ms. Meena had directed the management representative to supply Hindi version of Charge sheet as well as certified standing orders and the same were supplied to him by the enquiry officer.

He admitted that he had filed the reply to the charge sheet before enquiry officer during enquiry proceedings. He admitted that he had received the list of the witnesses as well as their statements and documents which were attached with the statements. He denied that due opportunity was afforded to him to cross-examine the management witnesses. He further denied that on 28.12.2016 opportunity was given to him to cross-examine the witnesses but he did not cross-examine the witnesses and left the enquiry. He denied that on 01.02.2017 he had appeared before the enquiry officer and despite granting opportunity to cross-examine the management witnesses, he did not cross-examine the management witnesses. He admitted that on 10.12.2018 Mr. Prince Chauhan was appointed as an enquiry officer to conduct further enquiry in the matter and intimation in this regard was sent to him through letter. He admitted that he had appeared before the enquiry officer and had participated in the enquiry. He admitted that through letter Ex. RW-3/B he was informed that the next date of hearing was fixed for 12.01.2019. He denied that he got up and left the enquiry proceedings. He denied that management representative had made a complaint against him vide Ex. RW3-/B. He admitted that he had moved an application for change of enquiry officer which was replied by the respondent management. He admitted that enquiry was fixed for 01.06.2019 and information in this regard was received by him on 29.05.2019. He admitted that he had not appeared before the enquiry officer on 01.06.2019. Self-stated that he could not appear in the enquiry due to ailment of his daughter. He admitted that he had not moved any application for adjournment of enquiry.

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

20. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. It was also argued that the petitioner was illegally proceeded against ex-parte by the enquiry officer on 1.6.2019 despite the fact that the petitioner had informed that he is not in a position to attend the proceedings on 01.06.2019. Ld. AR also took this Court through the written submission placed on record.

21. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 11.10.2009 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. It was argued by the Ld. Counsel for the respondent that the petitioner though initially joined the proceedings, but he was habitual of not appearing before the enquiry officer. Petitioner failed to appear before the enquiry officer on 01.06.2019. He argued that the petitioner had misbehaved with the enquiry officer Ms. Meena Thakur (appeared in the witness box as RW-2) and on 12.01.2019, the petitioner also misbehaved with enquiry officer Shri Prince Chauhan (appeared in the witness box as RW-3), even then he had informed the petitioner to join the enquiry proceedings on 01.6.2019, but despite the fact that he had received the letter in this regard he failed to appear in the enquiry proceedings as such the petitioner was proceeded exparte.

22. At the very inception it would appropriate to note that the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing

orders governing the employee's under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

23. The first and foremost plea which the petitioner has taken is that he was proceeded against ex-parte illegally, however, the record of case file shows that the petitioner was duly informed about the date of hearing by the enquiry officer and despite receiving the information that the enquiry had been fixed on 1.6.2019, the petitioner did not appear before the enquiry officer and thus he was proceeded against ex-parte. The petitioner had full knowledge that enquiry was pending against him. Petitioner has admitted that through letter dated 4.1.2019, he was informed that the next date of enquiry was fixed for 12.1.2019. He also admitted that he had appeared and participated in the enquiry on 12.1.2019. He has also admitted that enquiry was fixed for 1.6.2019 and information in this regard was received by him on 29.5.2019. He has also admitted that he had not appeared before the enquiry officer on 1.6.2019, but stated that due to ailment of his daughter, he could not appear before the enquiry officer. With the aforesaid statement of petitioner, it stands established on record that the petitioner had knowledge that the enquiry had been fixed for 1.6.2019, but he did not appear before the enquiry officer on which date he was proceeded ex-parte. Though, he has taken a plea that due to ailment of his daughter, he could not attended the enquiry proceedings on 1.6.2019, but neither any application was moved by the petitioner before the enquiry officer nor any medical record of his daughter was produced before this Court by the petitioner. With the cross-examination of petitioner, it is crystal clear that the petitioner choose to remain absent from the enquiry proceedings on 1.6.2019 despite due information/knowledge as such no fault can be found in the order passed by the enquiry officer to proceed the petitioner ex-parte.

24. Ld. AR for the petitioner had next argued that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation *Vs.* Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 286 and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal *Vs.* General Manager-II and appointing authority and State Bank of India and ors. *Vs.* S.K Kapoor, 2016 LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

25. The respondent management has placed on record, day to day enquiry proceedings Ex. RW-2/H and Ex. RW-3/C.

26. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-2/H that the enquiry officer Ms. Meena Thakur after her appointment as an enquiry officer had sent intimation to the management and worker to appear before her upon which Shri Anil Kumar

Saklani had appeared as management representative, but the worker had not appeared and the enquiry officer again intimated the worker through registered post about the next date of enquiry. The petitioner had written a letter dated 17.11.2015 to the management that he had not received letters (chargesheets) dated 4.9.2015, 11.9.2015 and 22.9.2015 and had prayed that the aforesaid letters be provided to him in Hindi. Apart from this, he had requested that if any other authentic document is annexed with the chargesheet copy of the same be provided to him in Hindi and also prayed that subsistence allowance *w.e.f.* 4.9.2015 till date be paid to him. During enquiry proceedings dated 12.12.2015, the enquiry officer had explained the procedure to be adopted in the enquiry to both the parties. It is evident from proceedings dated 9.2.2016 that Hindi version of the chargesheets and standing orders had already been supplied to the petitioner. On the same day, the petitioner had filed the reply and the management was asked to file the list of witnesses and documents, if any on the next date of hearing. It is evident from the enquiry proceedings dated 16.5.2016 that the management had changed its presenting officer, which was not objected by the worker. At any time, the petitioner had not raised any objection that due to non-supply of particular document, he was unable to file the reply to the chargesheets. It is evident from enquiry proceedings dated 16.5.2016, the respondent/management had produced certain documents which were taken on record and the copies of these documents were supplied to the petitioner. Apart from this, the list of witnesses and their statements were also produced and copies thereof were supplied to the petitioner and the proceedings were duly signed by the management representative as well as by the petitioner. During these proceedings, the petitioner had not raised any objection that the documents were not supplied to him due to which he could not file complete reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-2/B, Ex. RW-2/D and Ex. RW-1/F. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the Standing Orders are concerned, it has come in the enquiry proceedings that the copy of the same was demanded by the petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

27. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the certified standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner. There is no evidence on record to establish that the documents which were filed by petitioner during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the enquiry officer had issued instructions to the representative of the respondent to supply the documents to the petitioner and further directed that the documents demanded by the petitioner be supplied to him in Hindi. It is also evident from the enquiry proceedings that the statements of respondent witnesses were recorded, but the petitioner denied to cross-examine the witnesses and proceeded ex parte.

28. It would be appropriate at this stage to point out here that the petitioner while appearing in the witness box as PW-1 has not whispered even a single word that which material document was not supplied to him and what prejudice was caused to him due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

29. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

"**27(i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**

It was contended by the Ld. AR for the petitioner that the petitioner had made a written request vide letter dated 16.5.2016 for the appointment of Shri Anoop Prashar who was Vice President of AITUC as his defence assistant as per the provisions of Certified Standing Orders, but such permission was declined as such great prejudice has been caused to the case of the petitioner and he could not defend his case properly.

30. Admittedly, during the course of enquiry proceedings, the petitioner had made a request for appointment of Shri Anoop Prashar as his defence assistant. It is evident from the record that after making of request by the petitioner for the appointment of Shri Anoop Prashar as his defence assistant, the respondent company had objected to such application vide letter dated 13.6.2016 on the ground that an union leader or Advocate cannot appear as defence assistant. It is evident that after objection was raised, though the enquiry officer had not accepted the prayer of the petitioner to appoint Shri Anoop Prashar as defence assistant of the petitioner, but it was made clear that the petitioner can seek assistance of any other co-worker and any other person and even an opportunity was granted to the petitioner to engage any other co-worker or outsider as his defence assistant. Thereafter, the petitioner has not produced any other co-worker or outsider as his defence assistant.

31. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

32. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd. Banglore *Vs.* S. Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

" 4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.

5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd. In that case it was held that—

"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."

6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through

an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".

33. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

"6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others vs M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. vs Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. vs Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. vs Maharashtra General Kamgar Union & Others [1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself**.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd., and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee

has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

34. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Moreover, since, an order was passed by the enquiry officer whereby the objection of the management was accepted that Shri Anoop Prashar could not be appointed as defence assistant. The petitioner was granted opportunity to engage any other co-worker or outsider as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

35. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

36. So far as these arguments of Ld. AR for the petitioner are concerned, since the petitioner failed to appear before the enquiry officer and had proceeded against ex-parte, it cannot be said that what type of documents have been exhibited and marked during the statement of management witnesses. Moreover, the conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the statements of management witnesses. It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, petitioner was afforded full opportunity to cross-examine the witnesses of the management, but the petitioner choose to remain ex-parte on the date fixed as such he cannot agitate now that the enquiry has not been conducted fairly.

37. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.

16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.

17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.

38. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months.

39. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings Ex. PW-2/H and Ex. RW-3/C.

40. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal-II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Anil Saklani is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory on 3.9.2015 and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans

raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of Anil Kumar Saklani and that of Vinod Kumar clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

41. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

42. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also it is settled that the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory.

43. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

44. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

45. Let the parties be heard on quantum of punishment.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal vide its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scapegoat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that it has come in the statement of respondent witness Mahender Kumar (RW-1) that similar chargesheets were also served to other workers and they were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scapegoat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking Vs. Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated

11.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd., Vs. Dharam Dass AIR 1958 SC 311, Deepak Nitrite Vs. N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd., *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**

10. The above said agreement will be valid for a period of three years from the date of signature *i.e.* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd., *Vs.* Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., Vs. Workers of Herbertson Ltd., 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., *Vs.* Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC *Vs.* MG Vittal Rao (2012) 1 SCC 442, Kanhaiyalal Aggarwal *Vs.***

Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, Vide Binny Ltd., *Vs.* Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. *v.* Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty *v.* Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal v. Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman *v.* Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore Vs. Prem Singh. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner while appearing into the witness box as PW-1 has deposed even a single word that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala *Vs.* General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., Vs. Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	23 of 2021
Instituted on	:	15.02.2021
Preliminary issue framed on	:	20.06.2023
Decided on	:	28.12.2024

Yoginder s/o Sh. Khem Ram, r/o Village Kot, P.O. Jabli, Tehsil Kasauli, District Solan, HP. . . *Petitioner*.

Versus

The Factory Manager/ Occupier, HPL Electric and Power Ltd., Village Shavela, PO Jabli, Tehsil Kasauli, District Solan, HP. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 20.06.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 11.04.2007 when he was engaged as skilled workman in the MCB Sub-Assembly Department of the respondent and he remained in the employment till 10.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to his active trade unionism as he was the advisor of the union and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was advisor of the union which was a branch unit of the union i.e. Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed *w.e.f.* 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheet served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had

supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workman were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited later on when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statement of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management, but the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, inoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as skilled workman nor it was disputed that his services were dismissed vide letter dated 10.10.2019. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied

against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide charge sheets and 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings. Petitioner also cross-examined the witnesses of the respondent. Petitioner also examined his witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth his case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent had prejudice against the petitioner as such he was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that he required documents to file reply to the chargesheets. The documents which were asked by the petitioner were provided to him. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting a fair and proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the deducted provident fund had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principle of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 20.06.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Vishal Panwar, Enquiry Officer as RW-1 and Yashpal Sharma, Accounts Manager as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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.

Relief : As per operative part of the Order/ Award.

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Vishal Panwar, Enquiry officer as RW-1, who led his evidence by way of affidavit Ex. RW-1/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record his appointment letter as enquiry officer Ex. RW-1/B, intimation letter Mark A, respondent had appointed Sh. Manohar Sharma, as Presenting Officer vide letter dated 16.10.2015 mark-B, enquiry proceedings Ex. RW-1/C, subsequently on 08.12.2015 notice was issued to the petitioner to appear in the enquiry proceedings on 12.12.2015 mark-C, proceedings on dated 12.12.2015 Ex. RW-1/D, vide letter dated 17.11.2015 copy of which is mark-D, proceedings on 09.01.2016 Ex. RW-1/E, proceedings on 22.01.2016 Ex. RW-1/F, copies of chargesheets dated 4.9.2015, 11.09.2015 and 22.09.2015 are mark-E, mark-F & mark-G, reply filed to the chargesheets mark-H, enquiry proceedings on 04.02.2016 Ex. RW-1/G, copy of standing orders in Hindi translation and copy of receipt in this regard mark-J, enquiry proceedings on 14.05.2016 Ex. RW-1/K, reply to the letter dated 22.01.2016 of the petitioner, was filed by the respondent on 14.05.2016 Ex. RW-1/L, letter dated 14.05.2016 written by the petitioner for seeking permission to engage Sh. J.C. Bhardwaj as defence assistant mark-K, enquiries proceedings were conducted subsequently on 25.06.2016, 02.07.2016, 23.07.2016, 13.08.2016, 22.10.2016, 10.03.2017, 08.09.2017, 27.09.2018, 13.10.2018, 15.10.2018, 18.10.2018 and finally on 23.11.2018 are Ex. RW-1/M, Ex. RW-1/N, Ex. RW-1/O, Ex. RW-1/P, Ex. RW-1/Q, Ex. RW-1/R. Ex. RW-1/S, Ex. RW-1/T, Ex. RW-1/U, Ex. RW-1/V, Ex. RW-1/W and Ex. RW-1/X, enquiry report on 11.09.2019 Ex. RW-1/Y and Sh. J.C. Bhardwaj, was not allowed to appear as defence assistant for the petitioner as per letter dated 25.06.2016 Ex. RW-1/Z.

11. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders. He deposed that he cannot say that under what provision of the standing orders, an advocate can be appointed as enquiry officer. He denied that no intimation was given to the petitioner to appear in the proceedings on dated 19.10.2015. He showed ignorance that under what provisions of the standing orders, he had not allowed Sh. J.C. Bhardwaj to appear as a defence

assistant of the petitioner. Self stated that he had not refused an outside to appear as defence assistant. He deposed that he cannot say that under the Trade Union Act an office bearer of the union can appear as a defence assistant for the worker. He admitted that petitioner had submitted a letter to him that despite the elapse of 4 months, he was not being paid suspension allowance. He admitted that letter for appointment of defence assistant was filed before him and its reply was given by the management. Self stated that before the conducting the proceedings, it was agreed between the parties that each and every application and document shall be provided to the opposite party. He denied that the enquiry proceedings had been conducted by him in connivance with the management of the company. He deposed that he cannot say that as per clause 27-> of the standing orders anyone could have been call by the workman for his assistant in the enquiry. He denied that after 13.08.2016 he had conducted the enquiry after 2 years on 27.09.2018. He further denied that none of the witness of the management had stated in the enquiry that the petitioner along with other workers, who had been charge sheeted had never obstructed anyone from egress and ingress to the premises of the company. He denied that his enquiry report is not in conformity with the oral and documentary evidence on record. He deposed that he do not aware that compromise had been affected in between the management and the union regarding the strike. He denied that along with the charge sheet no documents were supplied to the petitioner during the enquiry proceedings or by the management. Self stated that no objection was ever raised in this regard by the petitioner. He denied that he had not conducted the enquiry in a fair manner and he also denied that he had conducted the enquiry contrary to the certified standing orders of the company.

12. The other witness examined by the respondent is Shri Yashpal Sharma, Accounts Manager of respondent company, who stepped into the witness box as RW-2 and led his evidence by way of affidavit Ex. RW-2/A, which is just a reproduction of the averments as made in the reply. He also placed on record copy of resolution Ex. RW-2/B, details of computer generated suspension allowance paid to the petitioner Ex. RW-2/C, bank statements Mark-RA, copies of chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3, suspension letter Ex. RW-2/E, letter dated 01.10.2015 mark-RB, copy of second show cause notice (in English) Ex. RW-2/F and its Hindi version Ex. RW-2/G. Self stated that enquiry report was also sent with the 2nd show cause notice. Reply to 2nd show cause notice Ex. RW-2/H, dismissal letter in English Ex. RW-2/J and its Hindi version Ex. RW-2/K, full and final settlement of accounts which was due to the petitioner Ex. RW-2/L along with the amount details Mark-RC, certified standing orders Ex. RW-2/M and settlement dated 05.11.2015 mark-RD.

13. During cross-examination, he admitted that the chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3 have neither been issued by him nor it bears his signatures. He also admitted that no documents are annexed with the chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3. Self stated that the charge sheet was not received by the petitioner. He denied that the chargesheet is not in consonance with the certified standing orders. He also denied that at the instance of the management, enquiry officer lingered on the enquiry proceeding for four years. He further denied that the enquiry was lingered on just to harass the petitioner. He admitted that he was not present during the enquiry proceedings. He denied that the similar chargesheets were handed over to 37 other workers and he further denied that the 35 workers were absolved from the similar charges. He denied that the management wanted to turn out the petitioner and other workers as they were office bearers of Trade Union.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut, the evidence of the respondent opportunity was granted to the petitioner to led his evidence but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement close the evidence of the petitioner on preliminary issue 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2019 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and he was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length and to some of the witnesses more than **30 questions** have been put by the petitioner during cross-examination. Not only this, the delinquent petitioner was afforded full opportunity to lead his own evidence in defence.

18. At the very inception it would appropriate to note that the word "misconduct" is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee's under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage *i.e.* before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation Vs. Lachhman Dass Gupta and another 2002-1-LLJ-544 SC and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal Vs. General Manager-II and appointing authority and Union of India and ors *Vs.* S.K Kapoor, 2011-II-LLJ 627 SC**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceedings Ex. RW-1/C to Ex. RW-1/K and Ex. RW-1/M to Ex. RW-1/X.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-1/C to Ex. RW-1/K and Ex. RW-1/M to Ex. RW-1/X that the enquiry was taken up on 19.10.2015 on which date Shri Manohar Sharma had appeared as presenting officer but Yoginder worker had not appeared. Directions were issued to the management to send notice to the petitioner to appear in the next date of hearing. It is evident from the proceedings dated 12.12.2015, the petitioner has not raised any objection qua the appointment of the enquiry officer. It was also disclosed to the petitioner that the proceedings would be taken up as per the principles of natural justice. The procedure of enquiry was explained to both the parties. The petitioner was also informed that he can bring a defence assistant to defend his case. The petitioner had stated that copies of chargesheets dated 4.11.2015, 11.9.2015 and 22.9.2015 be provided him in Hindi Accordingly, enquiry officer has directed the management to supply the Hindi version of chargesheets to the petitioner. It is also evident from the enquiry proceedings dated 22.1.2016 that Hindi version of the chargesheets as well as standing orders were supplied to the petitioner on 13.1.2016 and petitioner filed reply to these chargesheets. During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to him due to which he could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-2/D1 to Ex. RW-2/D3. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the Standing Orders are concerned, it has come in the enquiry proceedings that the copy of the same was demanded by the petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner and there is no averments in the petition that the documents which were filed by him during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the statements of witnesses were also supplied to the petitioner in advance so as to enable him to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to him rather after the Hindi version of document sought by him, he did not raise any objection qua any document which were not supplied to him.

23. It would be appropriate at this stage to point out here that the petitioner has not stepped into the witness box to state his case on oath that which material document was not supplied to him and what prejudice was caused to him due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

"**27(i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**

It was contended by the Ld. AR for the petitioner that the petitioner had made a written request *vide* letter dated 14.05.2016 received by the management and vide letter dated 2.7.2016 for the appointment of Shri J.C Bhardwaj who was President of AITUC as his defence assistant as per the provisions of Certified Standing Orders, but such permission was declined as such great prejudice has been caused to the case of the petitioner and he could not defend his case properly.

25. Admittedly, during the course of enquiry proceedings, the petitioner had made a request for appointment of Shri J.C Bhardwaj as his defence assistant. It is evident from the record that after making of request by the petitioner for the appointment of Shri J.C Bhardwaj as his defence assistant, the respondent company had objected to such application vide letter received by petitioner on 25.2.2016 on the ground that Shri J.C Bhardwaj was leading the strike of the workers and he was also appearing before the Labour Commissioner, Labour Officer as well as before the Labour Court and he is well conversant with the legal procedure, whereas the management representative was not acquainted with legal procedure as such the prayer was made that they be not appointed as defence assistant of the petitioner. It is evident that after objection was raised, though the enquiry officer had not accepted the prayer of the petitioner to appoint S/Shri J.C Bhardwaj as defence assistant of the petitioner, but it was made clear that the petitioner can seek assistance of any other co-worker and any other person and even an opportunity was granted to the petitioner on his request to engage any other co-worker or outsider as his defence assistant and the matter was adjourned. Thereafter, the petitioner has not produced any other co-worker or outsider as his defence assistant.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd., Banglore Vs. S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

"4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.

5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd. In that case it was held that—

"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."

6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through

an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

"6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others *vs* M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. *vs* Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. vs Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. *vs* Maharashtra General Kamgar Union & Others [1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself**.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd., and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee

has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. vs. Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Moreover, since, an order was passed by the enquiry officer whereby the objection of the management was accepted that Shri J.C Bhardwaj could not be appointed as defence assistant of the delinquent/petitioner because he had led the strike of the workers and he was practicing before the Labour Court and is appearing before the Labour Commissioner and Labour Officer and is law knowing persons. The petitioner was granted opportunity to engage any other co-worker or outsider as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Devinder Kumar were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, it is evident from enquiry proceedings dated 13.8.2016 that some documents were provided by the respondent but on the objection of the petitioner these documents were not taken on record. Shri Devinder Kumar was cross-examined at length by the petitioner and more than 40 question were put to this witness during cross-examination. The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined his witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has not stepped into the witness box to state that he was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and he was given full opportunity to cross-examine the witnesses of the respondent management and to lead his evidence in defence. The petitioner has put more than 40 questions to some of the management witness(es) and now it does not lie in the mouth of the petitioner to say that he was not afforded fair opportunity to defend his case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead his evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

> **15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.**
>
> **16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.**
>
> **17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.**

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner was not stepped into the witness box to prove any such prejudice which is alleged to have been caused to him on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 12.12.2015.

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal –II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Devinder Kumar is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of Devinder Kumar and that of Shekhar Singh and Deepak Swaroop clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram Vs. Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings, it has come in the enquiry proceedings that the petitioner himself had not appeared before the enquiry officer on certain occasions. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory under the Industrial Employment Standing Orders Act, 1946.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024
Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal *vide* its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scapegoat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that it has come in the statement of respondent witness Mahender Kumar (RW-2) that similar chargesheets were also served to other workers and they were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scapegoat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted

that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union Vs. Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking *Vs.* Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd., *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite Vs. N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd., *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.

9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.

10. The above said agreement will be valid for a period of three years from the date of signature *i.e* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd., *Vs.* Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., *Vs.* Workers of Herbertson Ltd., 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., *Vs.* Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement

dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC Vs. MG Vittal Rao (2012) 1 SCC 442, Kanhaiyalal Aggarwal *Vs.* Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, *Vide* Binny Ltd., *Vs.* Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. *v.* Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty *v.* Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal v. Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. *v.* Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore *Vs.* Prem Singh**. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job.

Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala *Vs.* General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette. Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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 2021
Instituted on	:	15.02.2021
Preliminary issue framed on	:	12.09.2023
Decided on	:	28.12.2024

Mukesh Kumar s/o Sh. Bhagwan Dass, Employee Code No. 509, r/o Village Chhoi, P.O. Munjyat, Tehsil Arki, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager/Occupier, Himachal Energy Pvt. Ltd. Village Shavela, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 12.09.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 16.11.2009 when he was engaged as Technician in the PCB Department of the respondent and he remained in the

employment till 10.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to his active trade unionism as he was the active member of the union and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was the active member of the union which was a branch unit of the union i.e Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed w.e.f. 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in the connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheet served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he has denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation on 24.09.2016 to the management for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workman were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited later on when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the

statement of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management, but the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, inoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as technician. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide charge sheets and 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings and the petitioner also cross-examined the witnesses of the respondent. Petitioner also examined his witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth his case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent had prejudice against the petitioner as such he was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that he required documents to file reply to the chargesheet. The documents which were asked by the petitioner were provided to him. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting an fair and proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry

proceedings were signed and received by the petitioner. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principles of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 12.09.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs*. Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Prince Chauhan, Enquiry Officer as RW-1 and Mahender Kumar, Manager HR as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the order/ Award

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Prince Chauhan, Enquiry officer as RW-1, who led his evidence by way of affidavit Ex. RW-1/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He has stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record chargesheet dated 4.9.2015 Ex. RW-1/B, chargesheet dated

11.9.2015 Ex. RW-1/C, chargesheet dated 22.9.2015 Ex. RW-1/D, letter dated 01.10.2015 regarding appointing enquiry officer Ex. RW-1/E, entire enquiry proceedings Ex. RW-1/F, enquiry report in English Ex. RW-1/G and its Hindi translation Ex. RW-1/H, copy of certified standing order Ex. RW-1/J.

11. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders, as per the principles of natural justice and fair hearing. He admitted that in page no. 2 of Ex. RW-1/F, he had mentioned that he has conducted the enquiry under the model standing order. Self stated that due to mistake word model standing orders was wrongly mentioned instead of certified standing orders. He denied that entire enquiry proceedings were wrongly conducted and written by him. He showed ignorance that on which date certified standing orders were handed over to him by the management. He denied that he had not gone through the certified standing orders and conducted the enquiry without following the procedure mentioned therein. He admitted that he had received copy of application at page no. 3 of Ex. RW-1/D. He admitted that it was mentioned in the application that as per the certified standing orders petitioner was entitled to engage a defence assistant of his own choice. He deposed that he had conducted the enquiry as per the certified standing orders and not at the direction of the management. He denied that he had violated the provisions of certified standing orders. He admitted that it is not written in the certified standing order that Sh. J.C. Bhardwaj, AR cannot be appointed as defence assistant. He admitted that as per Ex. RW-1/J at page no. 116 it is mentioned that the respondent management had not appear for conciliation for the second time. He also admitted that after 25.02.2017 enquiry proceedings were taken up on 09.02.2018. He denied that the enquiry was delayed unnecessary for a period of one year just to harass the workers. Self stated that he had received oral requests from both the sides that they were in process of settling the dispute outside. He denied that the evidence of the management witnesses by way of affidavit were received at the back of the worker and copy(s) thereof were not supplied to the worker. He also denied that the documents as taken in this enquiry were not supplied to the worker. He further denied that enquiry report is not inconformity with the statements made by the witnesses during the enquiry. He denied that enquiry proceedings as well as enquiry report has been prepared at the instance and instructions of the respondent management. He further denied that he had violated the principles of natural justice while conducting the enquiry.

12. The other witness examined by the respondent is Mahender Kumar, Manager HR of respondent company, who stepped into the witness box as RW-2 and led his evidence by way of affidavit Ex. RW-2/A, which is just a reproduction of the averments as made in the reply, that the enquiry was conducted as per certified standing orders and principles of natural justice. He also placed on record copy of board resolution Ex. RW-2/B, copy of certified standing orders Ex. RW-2/C, details of suspension allowance paid to the workman Ex. RW-2/D and bank details in this regard Ex. RW-2/E. As per the contents of Mark-X workman Mukesh is working with Reliance Project and Property Management Service Ltd. since January, 2020. Second show cause notice Ex. RW-2/F along with copy of enquiry report Ex. RW-2/G and second show cause notice in Hindi Ex. RW-2/F-1 along with enquiry report Ex. RW-1/H.

13. During cross-examination, he deposed that he was appointed by the respondent management in the month of September, 2023 and he has no personal knowledge about the strike. He admitted that no document was annexed or enclosed with the charge sheet which was supplied to the workman in Hindi. He admitted that he was not an enquiry officer as such he cannot say whether the enquiry was conducted as per the principles of natural justice. Enquiry was conducted as per the certified standing orders. He admitted that similar charges sheet were also served on some other workers and they were taken back. Self-stated that the charges against some of the workers were minor in nature as such they were taken back. He showed ignorance that the petitioner was terminated from service as he was office bearer of the union. He showed ignorance that repeated letter were written by the worker to the management to speed up the enquiry

proceeding. He admitted that the enquiry is conducted after the chargesheet is delivered to the delinquent. He denied that petitioner was not allowed to put up his defence properly with the assistance of defence assistant of his choice. He admitted that till 4 months of suspension, subsistence allowance was not paid to the petitioner. Self-stated that thereafter the subsistence allowance was paid to the petitioner. He admitted that second show cause notice was replied by the worker. He denied that no opportunity to file an appeal was granted to the workman and he was dismissed straightway.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2019 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and he was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length. Not only this, the delinquent petitioner was afforded full opportunity to lead his own evidence in defence.

18. At the very inception it would appropriate to note that the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and

management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation *Vs.* Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 286 and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal *Vs.* General Manager-II and appointing authority and Union of India and ors 2016 LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-1/F.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-1/F that the enquiry was taken up on 26.12.2015 on which date Ms. Minaxi had appeared as presenting officer and Mukesh Kumar worker had also appeared. It is evident from the proceedings dated 26.12.2015, the petitioner has not raised any objection qua the appointment of the enquiry officer. It was also disclosed to the petitioner that the proceedings would be taken up as per the principles of natural justice. The procedure of enquiry was explained to both the parties. The petitioner had stated that he had received the copy of chargesheets dated 4.11.2015, 11.9.2015 and 22.9.2015 and had requested the enquiry officer to provide him Hindi version of the same. Accordingly, enquiry officer had directed the management to supply the Hindi version of chargesheets and standing orders to the petitioner. It is also evident from the enquiry proceedings Ex. RW-1/F dated 16.01.2016 that Hindi version of the chargesheets were supplied to the petitioner. During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to him due to which he could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-1/B, Ex. RW-1/C and Ex. RW-1/D. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the documents which were claimed by the petitioner are concerned, it is evident from the proceeding dated 12.09.2016 that petitioner had stated all his demands had been complied he is only raised demand for providing him defence assistant of his choice.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-*cum*-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner and there is no evidence on record that the documents which were filed by him during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the list of the witnesses was supplied to the petitioner which was received by him on 30.01.2017. The statements of witnesses were also supplied to the petitioner in advance so as to

enable him to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to him rather after the Hindi version of document sought by him, he did not raise any objection qua any other document.

23. It would be appropriate at this stage to point out here that the petitioner has not stepped into the witness box to state his case on oath that which material document was not supplied to him and what prejudice was caused to him due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27(i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**

It was contended by the Ld. AR for the petitioner that the petitioner had made a written request vide letter dated 24.09.2016 for the appointment of Shri Anoop Prashar who was Senior Vice President of AITUC as his defence assistant as per the provisions of Certified Standing Orders, but such permission was declined as such great prejudice has been caused to the case of the petitioner and he could not defend his case properly.

25. Admittedly, during the course of enquiry proceedings, the petitioner had made a request for appointment of Shri Anoop Prashar as his defence assistant. It is evident from the record that after making of request by the petitioner for the appointment of Shri Anoop Prashar as his defence assistant, the respondent company had objected to such application vide their separate letter that Shri Anoop Prashar was leading the strike of the workers and he was close associate of Shri J.C Bhardwaj and Anoop Prashar was also appearing before the Labour Commissioner, Labour Officer as well as before the Labour Court and he is well conversant with the legal procedure, whereas the management representative was not acquainted with legal procedure as such the prayer was made that they be not appointed as defence assistant of the petitioner. It is evident that after objection was raised, though the enquiry officer had not accepted the prayer of the petitioner to appoint Sh. Anoop Prashar as defence assistant of the petitioner, but it was made clear that the petitioner can seek assistance of any other co-worker and any other person. Thereafter, the petitioner has not produced any other co-worker or outsider as his defence assistant.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd. Banglore *Vs.* S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **" 4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**

5. The matter is now concluded by the decision of this Court in Kalindi *v.* Tata Locomotive and Engineering Co. Ltd. In that case it was held that—

"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."

6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs.

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

"6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others vs M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. vs Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. vs Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. vs Maharashtra General Kamgar Union & Others [1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself**.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd. and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.** AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. *vs.* Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Moreover, an order was passed by the enquiry officer whereby the objection of the management was accepted that Shri Anoop Prashar cannot be appointed as defence assistant of the delinquent/petitioner because he had led the strike of the workers and he was practicing before the Labour Court and are appearing before the Labour Commissioner and Labour Officer and are law knowing persons. The petitioner was granted opportunity to engage any other co-worker or outsider as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Anil Saklani were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, Shri Anil Saklani was cross-examined at length by the petitioner. The conclusion which has been drawn by the

enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined his witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has not stepped into the witness box to state that he was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and he was given full opportunity to cross-examine the witnesses of the respondent management and to lead his evidence in defence. Now, it does not lie in the mouth of the petitioner to say that he was not afforded fair opportunity to defend his case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead his evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

> **15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.**
>
> **16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.**
>
> **17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.**

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner was not stepped into the witness box to prove any such prejudice which is alleged to have been caused to him on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 26.12.2015.

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal –II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Anil Saklani is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 03.09.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.09.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of Anil Saklani and Manoj Gautam clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings Ex. RW-1/F, it has come in the enquiry proceedings that sometimes the petitioner himself had sought adjournments. Since, reasons

for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also it is stated that the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be up held or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment. Order to continue.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal *vide* its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scapegoat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five

workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that it has come in the statement of respondent witness Mahender Kumar (RW-2) that similar chargesheets were also served to other workers and they were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scapegoat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking Vs. Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd. (2007) 13 SC 634, Model Mill Nagpur Ltd. *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite Vs. N.H. Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd. *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it

has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**
>
> **10. The above said agreement will be valid for a period of three years from the date of signature *i.e* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.**

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd. Vs. Their Workmen 1981-4 SCC 627, Herbertson S. Ltd. *Vs.* Workers of Herbertson Ltd. 1976-4 SCC 736**, **State of Uttranchal Vs. Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., *Vs.* Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and

disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC Vs. MG Vittal Rao (2012) 1 SCC 442, Kanhaiyalal Aggarwal Vs. Gwaliior Sugar Co. Ltd. (2001) 9 SCC 609, *Vide* Binny Ltd. *Vs.* Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. *v.* Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty *v.* Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal *v.* Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman *v.* Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. *v.* Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd. and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore *Vs.* Prem Singh**. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were

taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala Vs. General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd. (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan *Vs.* SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd. *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he

was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	26 of 2021
Instituted on	:	15.02.2021
Preliminary issue framed on	:	20.06.2023
Decided on	:	28.12.2024

Janki Devi w/o Sh. Bala Ram, Employee Code No. 278, r/o Village Sanana, P.O. Ghai Ghat, Tehsil Kasauli, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager/Occupier, HPL Electric and Power Ltd., Village Shavela, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 20.06.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited**

Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595, which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief:

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced her service career with the respondent company *w.e.f.* 01.03.2007 when she was engaged as housekeeper in the Housekeeping Department of the respondent and she remained in the employment till 11.10.2019 and thereafter her services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to her active trade unionism as she was the active member of the union and this fact subsists beyond any doubt that she was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was an active member of the union which was a branch unit of the union i.e Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which her services were dismissed *w.e.f.* 11.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in the connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of her choice was allowed to her. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheets served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein she has denied the charges levelled against her. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust her from services due to her trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management for permitting her to appoint a defence assistance of her choice but her request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and her demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the

workman were examined. It is alleged that not a single workman or any official of the company came forward to state that she was stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited lateron when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statements of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management, but the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, inoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as housekeeper nor it was disputed that her services were dismissed vide letter dated 11.10.2019. It was claimed that the services of the petitioner were dismissed for major misconduct levied against her vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide charge sheets dated 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings and the petitioner also cross-examined the witnesses of the respondent. Petitioner also examined her witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth her case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before her. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 11.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the

demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent had prejudice against the petitioner as such she was served with dismissal order dated 11.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that she required documents to file reply to the chargesheet. The documents which were asked by the petitioner were provided to her. It is denied that the petitioner was victimized and her services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting an fair and proper domestic enquiry and the petitioner was told by the enquiry officer that she can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and her services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principles of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which she denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 20.06.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Yashpal Sharma, Accounts Manager as RW-1 & Prince Chauhan, Enquiry Officer as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the order/ Award

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Yashpal Sharma, Accounts Manager of respondent company, who stepped into the witness box as RW-1 and 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 copy of resolution Ex. RW-1/B, details of computer generated suspension allowance paid to the petitioner Ex. RW-1/C, bank statements Mark-RA, copies of chargesheets Ex. RW-1/D-1 to Ex. RW-1/D-3, suspension letter Ex. RW-1/E, letter dated 01.10.2015 mark-RB, copy of second show cause notice (in English) Ex. RW-1/F and its Hindi version Ex. RW-1/G. Self stated that enquiry report was also sent with the 2nd show cause notice. Reply to 2nd show cause notice Ex. RW-1/H, dismissal letter in English Ex. RW-1/J and its Hindi version Ex. RW-1/K, full and final settlement of accounts which was due to the petitioner Ex. RW-1/L along with the amount details Mark-RC, certified standing orders Ex. RW-1/M, settlement dated 05.11.2015 mark-RD and letter regarding appointment of enquiry officer Ex. RW-1/N.

11. During cross-examination, he admitted that the chargesheets Ex. RW-1/D-1 to Ex. RW-1/D-3 have neither been issued by him nor it bears his signatures. He also admitted that no documents are annexed with the chargesheets Ex. RW-1/D-1 to Ex. RW-1/D-3. Self stated that the charge sheet was not received by the petitioner. He denied that the chargesheet is not in consonance with the certified standing orders. He also denied that at the instance of the management, enquiry officer lingered on the enquiry proceeding for four years. He further denied that the enquiry was lingered on just to harass the petitioner. He admitted that he was not present during the enquiry proceedings. He denied that the similar chargesheets were handed over to 37 other workers and he further denied that the 35 workers were absolved from the similar charges. He denied that the management wanted to turn out the petitioner and other workers as they were office bearers of Trade Union.

12. The other witness examined by the respondent is Shri Prince Chauhan, Enquiry officer who appeared in the witness box as RW-2, who led his evidence by way of affidavit Ex. RW-2/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He has stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record chargesheet in English dated 4.9.2015 Ex. RW-D1 and its Hindi version Ex. RW/D-1A, chargesheet in English dated 11.9.2015 Ex. RW1/D-2 and its Hindi version Ex. RW/D-2A, chargesheet in English dated 22.9.2015 Ex. RW-1/D-3 and its Hindi version Ex. RW/D-3A, letter dated 01.10.2015 regarding appointing enquiry officer Ex. RW-2/B, entire enquiry proceedings Ex. RW-2/C, newspaper cutting Mark-RX, enquiry report in English Ex. RW-2/D, and its Hindi translation Ex. RW-2/E, copy of certified standing order Ex. RW-2/F and its English version Ex. RW-1/M.

13. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders, as per the principles of natural justice and fair hearing. He admitted that in page no. 2 of Ex. RW-2/C, he had mentioned that he has conducted the enquiry under the model standing order. Self stated that due to mistake he wrongly mentioned word model standing orders, instead of certified standing orders. He denied that entire enquiry was wrongly conducted and written by him. He showed ignorance that on which date certified standing orders were handed over to him by the management. He denied that he had not gone through the certified standing orders and conducted the enquiry without following the procedure mentioned therein. He admitted that the petitioner is

totally uneducated lady who cannot read and write Hindi. He denied that the applicant had moved an application before him whereby she had expressed her intention to bring defence assistant of her own choice. He denied that mark-PX dated 02.07.2016 was moved by the petitioner. Self stated that she brought Suresh Kumar as her defence assistant after granting her several opportunities. He deposed that he had conducted the enquiry as per the certified standing order not at the directions of the management. He denied that he had violated the provisions of certified standing orders. He showed ignorance that respondent management had not appeared for conciliation for the second time. He admitted that after 04.11.2017 the enquiry proceedings were taken up on 16.02.2018. He denied that the enquiry was delayed unnecessary for a period of five months just to harass the workers at the instance of the management. Self stated that he had received oral requests from both the sides that they were in process of settling the dispute. He denied that statement of the management witnesses were recorded at the back of the worker. He also denied that the documents as taken in this enquiry were not supplied to the worker. He further denied that enquiry report is not inconformity with the statements made by the witnesses during the enquiry. He denied that enquiry proceedings as well as enquiry report has been prepared at the instance and instructions of the respondent management. He further denied that he violated the principles of natural justice while conducting the enquiry. He admitted that in Hindi version of his report Ex. RW-2/E at page no. 18 at point A to A it has been mentioned that the worker/ petitioner had also violated the terms & conditions of appointment letter certified standing orders. Self stated that in English version of his report Ex. RW-1/D at page no. 11 he has mentioned that the petitioner had committed breach of employment letter/ certified standing orders. He admitted that he had not taken on record, the appointment letter of the petitioner. He showed ignorance that a settlement was arrived between the union and the management qua this strike and that similar chargesheets were also issued to Indrani, Babli, Baldev Singh and Santosh Kumar.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner *vide* his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of her choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 11.10.2019 and before dismissing the services of the petitioner, 2nd show cause notice was served upon her. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and she was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length. Not only this, the delinquent petitioner was afforded full opportunity to lead her own evidence in defence.

18. At the very inception it would appropriate to note that the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means

which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee's under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what she should not have done and does not do what she should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which she is doing or that which she is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage *i.e.* before ordering the enquiry against her which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation Vs. Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 286 and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal *Vs.* General Manager-II and appointing authority State Banck of India and ors. 2016-LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-2/C.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-2/C that the enquiry was taken up on 26.12.2015 on which date Shri Devinder Sharma had appeared as presenting officer and Janki Devi worker had also appeared. It was disclosed to the petitioner by the enquiry officer that he had been appointed as an enquiry officer by the management to enquire into charges against the petitioner. Since, she was unable to read and write Hindi and English as such she was asked by the enquiry officer to bring a defence assistant on the next date of hearing. Thereafter, enquiry was taken up on 14.05.2016 that day petitioner had brought Suresh Kumar employment code 64, as her defence assistant. The proceedings of the enquiry were explained to both the parties. The list of the witness was also filed by the management and copy thereof supplied to the petitioner. The copy of statement of Devinder Sharma and the documents produced with statement were supplied to the petitioner on 02.07.2016. When the proceedings were taken up on 24.09.2016, the statement of Sanjay Minhas was taken on record and copy thereof was supplied to the petitioner. It is also evident from Ex. Rw-2/C that the petitioner had cross-examine witness Devinder Sharma at length and thereafter she had also cross-examine witness Sanjay Minhas. Petitioner had also filed her list of witnesses which is evident from proceeding date 08.02.2018. During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to her due to which she could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which she now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this

objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to her due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-2/D1 to Ex. RW-2/D3. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. It is evident from enquiry proceeding dated 30.07.2016 that all the documents are relied by the management were supplied to the worker/ petitioner. At no point of time, the petitioner had raised any objections that same documents demanded by her were not supplied to her during the enquiry.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand. It is evident from the enquiry proceedings that the list of the witnesses was supplied to the petitioner which was received by her on 14.05.2016, the statements were also supplied to the petitioner in advance so as to enable her to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to her, rather after the Hindi version of document sought by her was supplied to her, she did not raise any objection qua any document which were not supplied to her.

23. It would be appropriate at this stage to point out here that the petitioner has stepped into the witness box to state her case on oath that which material document was not supplied to her and what prejudice was caused to her due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of her choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27(i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**

It was contended by the Ld. AR for the petitioner that the petitioner was not allowed a defence assistant of her own choice and she wanted to engage either him (Sh. J.C. Bhardwaj) or Sh. Anoop Prashar as a defence assistant, but such opportunity was denied to the petitioner.

25. So far as this plea is concerned, the enquiry proceeding do not disclosed that any such request was made by the petitioner before the enquiry officer, rather she had brought Suresh Kumar as her defence assistant and she was allowed to be assisted by defence assistant of her choice, as such, the arguments advanced by Ld. AR for the petitioner in this regard have no force.

26. Otherwise, also the right to engage a defence assistant is not an absolute right. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd. Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd. Banglore *Vs.* S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **" 4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**
>
> **5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd. In that case it was held that—**
>
> **"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."**
>
> **6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".**

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

> "6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others vs M/s Tata Locomotive & Engineering Co. Ltd.,**

Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. vs Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. vs Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. vs Maharashtra General Kamgar Union & Others [1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd. and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.** AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company vs. Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Otherwise, also as has been discussed hereinabove, the petitioner has been allowed defence assistant of her choice during the enquiry proceeding.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. Vs. Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Devinder Sharma were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, Shri Devinder Sharma was cross-examined at length. The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined her witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has stepped into the witness box to state that she was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and she was given full opportunity to cross-examine the witnesses of the respondent management and to lead her evidence in defence. Now it does not lie in the mouth of the petitioner to say that she was not afforded fair opportunity to defend her case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead her evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

> **15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.**
>
> **16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.**
>
> **17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.**

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to her and she could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner has stepped into the witness box to prove any such prejudice which is alleged to have been caused to her on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 26.12.2015.

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal-II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Devinder Sharma is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statement of Devinder Sharma clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings Ex. RW-2/C. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in

concluding the enquiry. Otherwise also it is settled that the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be up held or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment. Order to continue.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal vide its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on her entire carrier. The petitioner is a poor person and she is the only bread winner of her family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scapegoat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty

five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that the settlement dated 5.11.2015 coupled with the record of the enquiry, chargesheets, it stands established that similar chargesheets were also served to some other workers, who were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scapegoat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union Vs. Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. Vs. Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking Vs. Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 11.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd. *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite Vs. N.H. Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd. *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it

has been established that the petitioner has taken part in the strike and other charges were also proved against her, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**
>
> **10. The above said agreement will be valid for a period of three years from the date of signature *i.e* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.**

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd. Vs. Their Workmen 1981-4 SCC 627, Herbertson S. Ltd. *Vs.* Workers of Herbertson Ltd. 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd. *Vs.* Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and

disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC *Vs.* MG Vittal Rao (2012) 1 SCC 442, Kanhaiyalal Aggarwal *Vs.* Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, Vide Binny Ltd. Vs. Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. *v.* Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty v. Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal *v.* Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd. *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore *Vs.* Prem Singh**. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of her proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such she cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were

taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala *Vs.* General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh V. General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd. (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that she was not gainfully employed, she is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd. *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal she

was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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 her misconduct. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	35 of 2021
Instituted on	:	17.02.2021
Preliminary issue framed on	:	20.06.2023
Decided on	:	28.12.2024

Anil Kumar s/o Shri Salig Ram, r/o Village Tarol, Post Office Ghaighat, Tehsil Kasauli, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager/Occupier, HPL Electric and Power Ltd./Himachal Energy Power Ltd., Village Shavela, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 20.06.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited**

Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595, which reads as under:

1. Whether the domestic enquiry conducted against the petitioner is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 14.06.2014 when he was engaged as Junior Inspector in the QA Department of the respondent and he remained in the employment till 10.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to his active trade unionism as he was the active member of the union and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was the active member of the union which was a branch unit of the union i.e Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed w.e.f. 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in the connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheet served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he has denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the

workman were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited lateron when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statement of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management, but the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, insoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as junior inspector nor it was disputed that his services were dismissed vide letter dated 10.10.2019. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide charge sheets dated 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings and the petitioner also cross-examined the witnesses of the respondent. Petitioner also examined his witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth his case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the

demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent had prejudiced against the petitioner as such he was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that he required documents to file reply to the chargesheet. The documents which were asked by the petitioner were provided to him. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting fair and proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principle of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 20.06.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner is fair and proper? . . *OPR*.

2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Vishal Panwar, Enquiry Officer as RW-1 and Yashpal Sharma, Accounts Manager as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the order/ Award

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent

10. Coming to evidence led by the respondent, respondent has examined Shri Vishal Panwar, Enquiry officer as RW-1, who led his evidence by way of affidavit Ex. RW-1/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He has stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record enquiry proceedings Ex. RW-1/B and enquiry report Ex. RW-1/C.

11. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders, as per the principles of natural justice and fair hearing. He denied that he had not gone through the standing orders and conducted the inquiry without following the procedure mentioned therein. He admitted that as per the certified standing orders clause 27-> the petitioner was entitled to engage a defense assistant of his own choice. He deposed that he received application in this regard and the reply of the same was called from the management who had objected the proposed name of Sh. J.C. Bhardwaj on the ground that he had led the strike of the workers, as such he should not be appointed as defence assistant. He further deposed that he conducted the enquiry as per the certified standing order and not at the directions of the management. He had taken reply from the management as per the procedure and then decided the application of the petitioner in this regard. He admitted that it is not written in the standing orders that Sh. J.C. Bhardwaj, AR cannot be appointed as defence assistant. He denied that he was bound to conclude the enquiry within 3 months. He denied that enquiry report has been prepared at the instance of the management.

12. The other witness examined by the respondent is Yashpal Sharma, Accounts Manager of respondent company, who stepped into the witness box as RW-2 and led his evidence by way of affidavit Ex. RW-2/A, which is just a reproduction of the averments as made in the reply. He also placed on record copy of resolution Ex. RW-2/B, details of computer generated suspension allowance paid to the petitioner Ex. RW-2/C, bank statements Mark-RA, copies of chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3, suspension letter Ex. RW-2/E, letter dated 01.10.2015 mark-RB, copy of second show cause notice (in English) Ex. RW-2/F and its Hindi version Ex. RW-2/G. He deposed that enquiry report was also sent with the 2nd show cause notice. Reply to 2nd show cause notice Ex. RW-2/H, dismissal letter in English Ex. RW-2/J and its Hindi version Ex. RW-2/K, full and final settlement of accounts Ex. RW-2/L along with the amount details Mark-RC, certified standing orders Ex. RW-1/D and settlement dated 05.11.2015 mark-RD.

13. During cross-examination, he admitted that the chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3 have neither been issued by him nor it bears his signatures. He also admitted that no documents are annexed with the chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3. He denied that the chargesheet is not in consonance with the certified standing orders. He also denied that at the instance of the management, enquiry officer lingered on the enquiry proceeding for four years. He further denied that the enquiry was lingered on just to harass the petitioner. He admitted that he was not present during the enquiry proceedings. He denied that the similar chargesheets were handed over to 37 other workers and further denied that the 35 workers were absolved from the similar charges. He denied that the management wanted to turn out the petitioner and other workers as they were office bearers of Trade Union.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2019 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and he was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length and to some of the witnesses more than 20 questions have been put by the petitioner during cross-examination. Not only this, the delinquent petitioner was afforded full opportunity to lead his own evidence in defence.

18. At the very inception it would appropriate to note that the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation *Vs.* Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 286 and 2011-II LLJ 627 SC case**

titled as Union of India and Ors *Vs.* S.K Kapoor. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal *Vs.* General Manager-II and appointing authority and State Bank of India and ors. 2016 LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-1/B.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-1/B that the enquiry was taken up on 19.10.2015 on which date Shri Manohar Sharma had appeared as presenting officer but Anil Kumar worker had not appeared. Directions were issued to the management to send notice to the petitioner to appear in the next date of hearing. It is evident from the proceedings dated 12.12.2015, the petitioner has not raised any objection qua the appointment of the enquiry officer or the appointment of management representative. During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to him due to which he could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-2/D-1 to Ex. RW-2/D-3. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets which were to be supplied to the petitioner. So far as the Standing Orders are concerned, it has come in the enquiry proceedings that the copy of the same was demanded by the petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner and there is no evidence on record that the documents which were filed by him during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the list of the witnesses was supplied to the petitioner which was received by him on 14.5.2016. The statements of witnesses were also supplied to the petitioner in advance so as to enable him to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to him rather after the Hindi version of document sought by him was received by him, he did not raise any objection qua any document.

23. It would be appropriate at this stage to point out here that the petitioner has not stepped into the witness box to state his case on oath that which material document was not supplied to him and what prejudice was caused to him due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section

27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27(i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**
>
> It was contended by the Ld. AR for the petitioner that the petitioner had made a written request vide letter dated 14.05.2016 received by the management on 14.05.2016 for the appointment of Shri J.C. Bhardwaj who was President of AITUC as his defence assistant as per the provisions of Certified Standing Orders, but such permission was declined as such great prejudice has been caused to the case of the petitioner and he could not defend his case properly.

25. Admittedly, during the course of enquiry proceedings, the petitioner had made a request for appointment of Shri J.C. Bhardwaj as his defence assistant. It is evident from the record that after making of request by the petitioner for the appointment of Shri J.C. Bhardwaj as his defence assistant, the respondent company had objected to such application vide letter received by petitioner on 25.06.2016 on the ground (as also mentioned in proceedings dated 25.06.2016) that Shri J.C. Bhardwaj was leading the strike of the workers and he was also appearing before the Labour Commissioner, Labour Officer as well as before the Labour Court and he is well conversant with the legal procedure, whereas the management representative was not acquainted with legal procedure as such the prayer was made that they be not appointed as defence assistant of the petitioner. It is evident that after objection was raised, though the enquiry officer had not accepted the prayer of the petitioner to appoint Shri J.C Bhardwaj as defence assistant of the petitioner, but it was made clear that the petitioner can seek assistance of any other co-worker and any other person and even an opportunity was granted to the petitioner on his request to engage any other co-worker or outsider as his defence assistant as is evident from proceedings dated 22.10.2016. Thereafter, the petitioner has not produced any other co-worker or outsider as his defence assistant.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd. Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd. Banglore *Vs.* S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **" 4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**
>
> **5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd. In that case it was held that—**
>
> **"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."**

6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

"6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others vs M/s Tata Locomotive & Engineering Co. Ltd. Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. vs Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. vs Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. vs Maharashtra General Kamgar Union & Others [1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself**.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd. and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. vs. Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the

Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company vs. Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. vs. Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Moreover, since, an order was passed by the enquiry officer whereby the objection of the management was accepted that Shri J.C. Bhardwaj could not be appointed as defence assistant of the delinquent/petitioner because they had led the strike of the workers and he was practicing before the Labour Court and are appearing before the Labour Commissioner and Labour Officer and are law knowing persons. The petitioner was granted opportunity to engage any other co-worker or outsider as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Devinder Kumar were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, Shri Devinder Kumar was cross-examined at length by the petitioner and more than 20 question were put to this witness during cross-examination and other witnesses have also been cross-examined by the petitioner at length. The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined his witness(es) in defence and the enquiry officer on the

basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has not stepped into the witness box to state that he was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and he was given full opportunity to cross-examine the witnesses of the respondent management and to lead his evidence in defence. The petitioner has put more than 20 questions to some of the management witness(es) and now it does not lie in the mouth of the petitioner to say that he was not afforded fair opportunity to defend his case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead his evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

> **15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.**
>
> **16. In the judgment rendered in State Bank of Patiala and Others *V.* S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.**
>
> **17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.**

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner has not stepped into the witness box to prove any such prejudice which is alleged to have been caused to him on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or

defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 12.12.2015 (Ex. PW-1/B).

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon V/s Presiding Officer Industrial Tribunal –II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Devinder Kumar is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of Vishal Kainth and that of Gulwant Singh and Devinder Sharma clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings Ex. RW-1/B. It is evident from the enquiry proceedings dated 23.7.2016, 27.8.2016, 10.9.2016 and 8.9.2017 that sometimes petitioner himself had sought adjournments by making applications for adjournment of enquiry proceedings or sometimes he remained absent. Reasons for delay in inquiry have also been recorded by the enquiry officer in proceedings dated 27.9.2018 as his mother had sustained brain stroke and paralytic attack, as such it cannot be held that there is unjustifiable delay in concluding the enquiry.

Otherwise also it is settled that the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment. Order to continue.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal *vide* its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scape goat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed

under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that the settlement dated 5.11.2015 coupled with the record of the enquiry, chargesheets, it stands established that similar chargesheets were also served to some other workers, who were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scape goat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking *Vs.* Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd. *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite *Vs.* N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd. Vs. N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and

proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**
>
> **10. The above said agreement will be valid for a period of three years from the date of signature *i.e* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.**

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd. *Vs.* Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., *Vs.* Workers of Herbertson Ltd. 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd. *Vs.* Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a

whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC Vs. MG Vittal Rao (2012) 1 SCC 442, Kanhaiyalal Aggarwal Vs. Gwaliior Sugar Co. Ltd. (2001) 9 SCC 609, *Vide* Binny Ltd., *Vs.* Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. *v.* Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty *v.* Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal *v.* Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman *v.* Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd. *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. *v.* Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore *Vs.* Prem Singh**. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala *Vs.* General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh V. General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya**

(2013) 10 SCC 324. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.
Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	50 of 2021
Instituted on	:	23.02.2021
Preliminary issue framed on	:	20.06.2023
Decided on	:	28.12.2024

Meera Devi, w/o Sh. Ganga Ram, r/o Village Koti, P.O. Jabli, Tehsil Kasauli, District Solan, HP. . . *Petitioner*.

Versus

The Factory Manager/Occupier, HPL Electric and Power Ltd., Village Shavela, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, A.R.

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 20.06.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced her service career with the respondent company *w.e.f.* 26.06.2006 when she was engaged as Junior Operator in the Production Department of the respondent and she remained in the employment till 10.10.2019 and thereafter her services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to her active trade unionism as she was the executive member of the union and this fact subsists beyond any doubt that she was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudiced against the office bearers and activists of the union. The petitioner was an executive member of the union which was a branch unit of the union *i.e*. Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which her services were dismissed *w.e.f.* 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in the connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of her choice was allowed to her. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheet served by the management against the petitioner. Petitioner submitted the reply of the chargesheets wherein she has denied the charges levelled against her. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust her from services due to her trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management for permitting her to appoint a defence assistance of her choice but her request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and her demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the

facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workman were examined. It is alleged that not a single workman or any official of the company came forward to state that they were stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited later on when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statement of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management, but the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, in operative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as junior operator nor it was disputed that her services were dismissed vide letter dated 10.10.2019. It was claimed that the services of the petitioner were dismissed for major misconduct levied against her vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide charge sheets and 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings and the petitioner also cross-examined the witnesses of the respondent. Petitioner also examined her witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth her case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner

vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was an active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent, in its letter and spirit. It was denied that the respondent had prejudice against the petitioner as such she was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that she required documents to file reply to the chargesheet. The documents which were asked by the petitioner were provided to her. It is denied that the petitioner was victimized and her services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting a fair and proper domestic enquiry and the petitioner was told by the enquiry officer that she can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and her services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principles of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which she denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 20.06.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Yashpal Sharma, Account Manager as RW-1 and Prince Chauhan, Enquiry Officer as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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.

Relief : As per operative part of the order/ Award.

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Yashpal Sharma, Accounts Manager of respondent company, who stepped into the witness box as RW-1 and 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 copy of resolution Ex. RW-1/B, details of computer generated suspension allowance paid to the petitioner Ex. RW-1/C, bank statements Mark-RA, copies of chargesheets Ex. RW-1/D-1 to Ex. RW-1/D-3, suspension letter Ex. RW-1/E, letter dated 01.10.2015 mark-RB, copy of second show cause notice (in English) Ex. RW-1/F and its Hindi version Ex. RW-1/G. Self stated that enquiry report was also sent with the 2nd show cause notice. Reply to 2nd show cause notice Ex. RW-1/H, dismissal letter in English Ex. RW-1/J and its Hindi version Ex. RW-1/K, full and final settlement of accounts which was due to the petitioner Ex. RW-1/L along with the amount details Mark-RC, certified standing orders Ex. RW-1/M, settlement dated 05.11.2015 mark-RD and letter regarding appointment of enquiry officer Ex. RW-1/N.

11. During cross-examination, he admitted that the chargesheets Ex. RW-1/D-1 to Ex. RW-1/D-3 have neither been issued by him nor it bears his signatures. He also admitted that no documents are annexed with the chargesheets Ex. RW-1/D-1 to Ex. RW-1/D-3. Self stated that the charge sheet was not received by the petitioner. He denied that the chargesheet is not in consonance with the certified standing orders. He also denied that at the instance of the management, enquiry officer lingered on the enquiry proceeding for four years. He further denied that the enquiry was lingered on just to harass the petitioner. He admitted that he was not present during the enquiry proceedings. He denied that the similar chargesheets were handed over to 37 other workers and he further denied that the 35 workers were absolved from the similar charges. He denied that the management wanted to turn out the petitioner and other workers as they were office bearers of Trade Union.

12. The other witness examined by the respondent is Shri Prince Chauhan, Enquiry officer as RW-2, who led his evidence by way of affidavit Ex. RW-2/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He has stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record chargesheet in English dated 4.9.2015 Ex. RW-1/D-1 and its Hindi version Ex. RW/D-1A, chargesheet in English dated 11.9.2015 Ex. RW-1/D-2 and its Hindi version Ex. RW/D-2A, chargesheet in English dated 22.9.2015 Ex. RW-1/D-3 and its Hindi version Ex. RW/D-3A, letter dated 01.10.2015 regarding appointing him enquiry officer Ex. RW-2/B, entire enquiry proceedings Ex. RW-2/C, newspaper cutting Mark-RX, enquiry report in English Ex. RW-2/D and its Hindi translation Ex. RW-2/E, copy of certified standing order Ex. RW-2/F and its English version Ex. RW-1/M.

13. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders, as per the principles of natural justice and fair hearing. He admitted that at page no. 91 of Ex. RW-2/C, he had mentioned that he would conduct the enquiry under the model standing order. Self stated that due to mistake word model standing orders was mentioned wrongly instead of certified standing orders. He denied that entire enquiry proceedings were wrongly conducted and written by him. He showed ignorance that on which date certified standing orders were handed over to him by the management. He denied that he had not gone through the certified standing orders and conducted the enquiry without following the procedure mentioned therein. He admitted that he

had received copy of application at page no. 3 of Ex. RW-2/C. He admitted that it was mentioned in the application that as per the certified standing orders she was entitled to engage a defence assistant of her own choice. He admitted that he had accepted the objections raised by the management and declined the request made by the worker. Self stated that management had objected on the name of Sh. J.C. Bhardwaj and Anup Prashar as they were the main leaders behind the strike. He deposed that he had conducted the enquiry as per the certified standing order not at the directions of the management. He denied that he had violated the provisions of certified standing orders. He admitted that it is not written in the certified standing order that Sh. J.C. Bhardwaj, AR cannot be appointed as a defence assistant. He showed ignorance that the respondent management had not appeared for conciliation for the second time. He admitted that after 14.10.2017 enquiry proceedings were taken up on 08.02.2018. He denied that the enquiry was delayed unnecessary for a period of six months just to harass the workers. Self stated that he had received oral requests from both the sides that they were in process of settling the dispute. He denied that statement of the management witnesses were recorded at the back of the worker. He also denied that the documents as taken in this enquiry were not supplied to the worker. He further denied that enquiry report is not inconformity with the statements made by the witnesses during the enquiry. He denied that enquiry proceedings as well as enquiry report has been prepared at the instance and instructions of the respondent management. He further denied that he had violated the principles of natural justice while conducting the enquiry. He admitted that in Hindi version of his report Ex. RW-2/E at page no. 16 at point A to A has been mentioned that the worker/ petitioner had also violated the terms & conditions of appointment letter. Self stated that in English version of his report Ex. RW-2/G at page no. 11 he had mentioned that the petitioner had committed breach of employment letter/ certified standing orders. He admitted that he had not taken on record the appointment letter of the petitioner. He showed ignorance that a settlement was arrived between the union and the management qua this strike and that similar chargesheets were also issued to Indrani, Babli, Baldev Singh and Santosh Kumar.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of her choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2009 and before dismissing the services of the petitioner, 2nd show cause notice was served upon her. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and she was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length. Not only this, the delinquent petitioner was afforded full opportunity to lead her own evidence in defence.

18. At the very inception it would appropriate to note that the word "misconduct" is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee's under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what she should not have done and does not do what she should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which she is doing or that which she is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against her which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation *Vs.* Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 286 and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal *Vs.* General Manager-II and appointing authority State Banck of India and ors. 2016-LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-2/C.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-2/C that the enquiry was taken up on 04.02.2016 on which date management representative as well as petitioner both were present. It is evident from order dated 04.02.2016 that Hindi version of the chargesheet as well as standing orders had already been supplied to the petitioner and petitioner had filed reply to these chargesheets. Petitioner had moved an application for issuance on subsistence allowance which was taken on record. The enquiry proceeding dated 04.02.2016 establish on record that the petitioner had not raise any objection qua appointment of enquiry officer. The copy of certified standing orders was also supplied to the petitioner which fact is also evident on 14.05.2016. The list of witnesses was also taken on record on the same date and copy thereof was supplied to the petitioner. From the enquiry proceedings Ex. RW-2/C, it is established that the Hindi version of the chargesheets as well as standing orders were supplied to the petitioner. During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to her due to which she could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which she now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the

petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-2/D1 to Ex. RW-2/D3. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the Standing Orders are concerned, it has come in the enquiry proceedings that the copy of the same was demanded by the petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-**cum**-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner as is evident from enquiry proceedings dated 04.02.2016 and there is no averments in the petition that the documents which were filed by her during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the list of the witnesses was supplied to the petitioner which was received by her on 14.05.2016. The statements of witnesses were also supplied to the petitioner in advance so as to enable her to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to her rather after the Hindi version of document sought by her, she did not raise any objection qua any other document.

23. It would be appropriate at this stage to point out here that the petitioner has stepped into the witness box to state her case on oath that which material document was not supplied to her and what prejudice was caused to her due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of her choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27 (i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**
>
> It is contended by the learned AR for the petitioner that petitioner had made a request *vide* letter dated 04.02.2016 that she be allowed to produce defence assistant but said permission was denied.

25. Admittedly, during course of enquiry the petitioner had made a request to produced her defence assistant, it is evident from letter dated 04.02.2016. It is evident from letter dated 14.05.2016 that the manager had objected for the appointment of any union leader or outsider to be appointed as a defence assistant. However, they did not have objection if a co-worker is appointed as a defence assistant. The enquiry officer had agreed with the objections raised by the respondent in this regard but thereafter no co-worker or any defence assistant was produced by the petitioner to defence her case. The matter was adjourned and thereafter listed for evidence of the respondent, but at no point of time petitioner however made request that Sh. J.C. Bhardwaj be appointed as defence assistant to defend her case. Thus it does not lie in the mouth of the petitioner to agitate that she was no allowed a defence assistant of her own choice or that Sh. J.C. Bhardwaj was not appointed as a defence assistant for the petitioner.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd., Banglore *Vs.* S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **" 4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**
>
> **5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd.. In that case it was held that-**
>
> **"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."**
>
> **6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".**

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

> "6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration**

by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others *vs* M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. *vs* Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. *vs* Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. *vs* Maharashtra General Kamgar Union & Others (1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd., and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. *vs.* Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-**cum-**Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. The petitioner

was granted opportunity to engage any other co-worker as her defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as her defence assistant to defend her case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that she was not allowed to be represented through defence assistant of her choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Devinder Sharma were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, Shri Devinder Sharma was cross-examined at length by the petitioner. The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined her witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has stepped into the witness box to state that she was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and she was given full opportunity to cross-examine the witnesses of the respondent management and to lead her evidence in defence. Now it does not lie in the mouth of the petitioner to say that she was not afforded fair opportunity to defend her case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead her evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

> **15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.**
>
> **16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.**
>
> **17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance.**

It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to her and she could not defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner has stepped into the witness box to prove any such prejudice which is alleged to have been caused to her on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 04.12.2016.

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal-II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Devinder Sharma is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-*cum*-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Statements of Shekhar Singh and that of Dinesh Kaushal and Devinder Sharma clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as

made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings Ex. RW-2/C. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also it is settled that the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be up held or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment. Order to continue.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too

harsh. He further contended that this Court/Tribunal vide its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on her entire carrier. The petitioner is a poor person and she is the only bread winner of her family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scape goat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that the settlement dated 5.11.2015 coupled with the record of the enquiry, chargesheets, it stands established that similar chargesheets were also served to some other workers, who were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scape goat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking *Vs.* Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd., *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite *Vs.* N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd., *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against her, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**
>
> **10. The above said agreement will be valid for a period of three years from the date of signature *i.e* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.**

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd.,**

Vs. **Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., *Vs.* Workers of Herbertson Ltd., 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., *Vs.* Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC *Vs.* MG Vittal Rao (2012) 1 SCC 442,**

Kanhaiyalal Aggarwal *Vs.* Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, Vide Binny Ltd., Vs. Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. v. Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty *v.* Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal *v.* Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535:

AIR 1985 SC 1128], Kamal Kishore Lakshman *v.* Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore *Vs.* Prem Singh. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of her proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such she cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala Vs. General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that she was not gainfully employed, she is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal she was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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 her misconduct. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	61 of 2021
Instituted on	:	24.02.2021
Preliminary issue framed on	:	12.09.2023
Decided on	:	28.12.2024

Ashwani Kumar, S/o Sh. Prem Chand, R/o Village Dol, P.O. Gopalpur, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Factory Manager/Occupier, HPL Electric and Power Ltd.,/ Himachal Energy Pvt. Ltd., Village Shavela, PO Jabli, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR.

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 12.09.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 13.08.2010 when he was engaged as Technician in the Testing Department of the respondent and he remained in the employment till 10.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to his active trade unionism as he was the active member of the union and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was the active member of the union which was a branch unit of the union *i.e.* Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into the settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudice against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed w.e.f. 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in the connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheet served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he has denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management

for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workman were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited later on when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statement of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. Legal practitioner was engaged as an enquiry officer by the management, but the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, in operative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice. It has also been prayed that the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as technician nor it was disputed that his services were dismissed vide letter dated 10.10.2019 for major misconduct. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide charge sheets and 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair

hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings and the petitioner also cross-examined the witnesses of the respondent. Petitioner also examined his witnesses. Petitioner was given all opportunities in the enquiry proceedings to put forth his case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It had denied that the respondent had prejudiced against the petitioner as such he was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that he required documents to file reply to the chargesheet. The documents which were asked by the petitioner were provided to him. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting an fair and proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of principles of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 12.09.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Vishal Panwar, Enquiry Officer as RW-1 and Mahender Kumar, Manager HR as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the Order/ Award

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Vishal Panwar, Enquiry officer as RW-1, who led his evidence by way of affidavit Ex. RW-1/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He has stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record his appointment letter as enquiry officer Ex. RW-1/B, intimation letter Mark A, Chargesheet dated 4.9.2015 Ex. RW-1/C, chargesheet dated 11.9.2015 Ex. RW-1/D, chargesheet dated 22.9.2015 Ex. RW-1/E, entire enquiry proceedings Ex. RW-1/F, enquiry report in Hindi Ex. RW-1/G, copy of certified standing order in Hindi Ex. RW-1/H and certified standing order Ex. RW-1/J.

11. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders, as per the principles of natural justice and fair hearing. He denied that he had not gone through the standing orders and conducted the inquiry without following the procedure mentioned therein. He admitted that as per the certified standing orders clause 27-> the petitioner was entitled to engage a defense assistant of his own choice. He deposed that after he received application in this regard and the reply of the same was called from the management who had objected the proposed name of Sh. J.C. Bhardwaj on the ground that he had led the strike of the workers, as such he should not be appointed as defence assistant. He further deposed that he conducted the enquiry as per the certified standing order and not at the directions of the management and he had taken reply from the management as per the procedure and then he had decided the application of the petitioner in this regard. He admitted that it is not written in the standing orders that Sh. J.C. Bhardwaj, AR cannot be appointed as defence assistant. He denied that he was bound to conclude the enquiry within 3 months. He denied that enquiry report has been prepared at the instance of the management.

12. The other witness examined by the respondent is Mahender Kumar, Manager HR of respondent company, who stepped into the witness box as RW-2 and led his evidence by way of affidavit Ex. RW-2/A, which is just a reproduction of the averments as made in the reply. He also placed on record copy of board resolution Ex. RW-2/B, original copy of certified standing orders Ex. RW-1/J, details of suspension allowance paid to the workman Ex. RW-2/C and the bank details Ex. RW-2/D. As per the contents of Mark-X Ashwani (workman) was working with the Microtech Balaji Powertroinics Pvt. Ltd, and now with Volts Power Technology Pvt. Ltd., since 09.11.2022 as per UAN details from EPFO Website. Second show cause notice Ex. RW-2/E along with copy of enquiry report Ex. RW-1/G, reply of the worker Ex. RW-2/F, dismissal letter Ex. RW-2/G and Hindi version is Ex. RW-2/H, and full & final payments Mark-Y.

13. During cross-examination, he deposed that he was appointed by the respondent management in the month of September, 2023. He denied that EPFO document mark-X was fabricated document. He admitted that the document has not been attested by any authority. He admitted that mark-Y does not bears signature of the workman. He admitted that the mark-Y is also forged document. He admitted that no document was annexed or enclosed with the charge sheet which was supplied to the workman in Hindi. He admitted that he was not an enquiry officer as such he cannot say that the enquiry was conducted as per the principles of natural justice. He deposed that from 03.09.2015 to 05.11.2015 all the workers were on strike. He admitted that similar charge sheet was also served to some other workers and they were taken back. Self-stated that the charges against some of the workers were minor in nature as such they were taken back. He admitted that the enquiry was conducted after the chargesheet is delivered to the delinquent. He denied that petitioner was not allowed to put up his defence properly with the assistance of defence assistant of his choice. He admitted that till 4 months of suspension, subsistence allowance was not paid to the petitioner. Self-stated that thereafter the subsistence allowance was paid to the petitioner. He admitted that second show cause notice was reply by the worker. He denied that no opportunity to file the appeal was granted to the workman and he was dismissed straightway.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2019 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and he was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length and to some of the witnesses more than 25 questions have been put by the petitioner during cross-examination. Not only this, the delinquent petitioner was afforded full opportunity to lead his own evidence in defence.

18. At the very inception it would appropriate to note that the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each

facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation *Vs.* Lachhman Dass Gupta and another 2002-1-LLJ-544 SC and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal *Vs.* General Manager-II and appointing authority and Union of India and ors *Vs.* S.K Kapoor, 2011-II-LLJ 627 SC**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-1/F.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-1/F that the enquiry was taken up on 19.10.2015 on which date Shri Anil Saklani had appeared as presenting officer but Ashwani Kumar worker had not appeared. Directions were issued to the management to send notice to the petitioner to appear in the next date of hearing. It is evident from the proceedings dated 12.12.2015, the petitioner has not raised any objection qua the appointment of the enquiry officer. It was also disclosed to the petitioner that the proceedings would be taken up as per the principles of natural justice. The procedure of enquiry was explained to both the parties. The petitioner was also informed that he can bring a defence assistant to defend his case. The petitioner had stated that he had received the copy of chargesheets dated 4.11.2015, 11.9.2015 and 22.9.2015 and had requested the enquiry officer to provide him Hindi version of the same. Accordingly, enquiry officer has directed the management to supply the Hindi version of chargesheets and standing orders to the petitioner. **It is also evident from the enquiry proceedings Ex. RW-1/F that Hindi version of the chargesheets as well as standing orders were supplied to the petitioner.** During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to him due to which he could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-1/C, Ex. RW-1/D and Ex. RW-1/E. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the Standing Orders are concerned, it has come in the enquiry

proceedings that the copy of the same was demanded by the petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner and there is no averments in the petition that the documents which were filed by him during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the list of the witnesses was supplied to the petitioner which was received by him on 02.07.2016, the statements were also supplied to the petitioner in advance so as to enable him to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to him rather after the Hindi version of document sought by him, he did not raise any objection qua any document which were not supplied to him.

23. It would be appropriate at this stage to point out here that the petitioner has not stepped into the witness box to state his case on oath that which material document was not supplied to him and what prejudice was caused to him due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27 (i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**
>
> It was contended by the Ld. AR for the petitioner that the petitioner had made a written request vide letter dated 16.07.2016 for the appointment of Sh. J.C. Bhardwaj who was President of AITUC as his defence assistant as per the provisions of Certified Standing Orders, but such permission was declined as such great prejudice has been caused to the case of the petitioner and he could not defend his case properly.

25. Admittedly, during the course of enquiry proceedings, the petitioner had made a request for appointment of Shri J.C. Bhardwaj as his defence assistant. It is evident from the record that after making of request by the petitioner for the appointment of Shri J.C. Bhardwaj as his defence assistant, the respondent company had objected to such application vide letter received by petitioner on 27.08.2016 on the ground (as mentioned in proceedings dated 27.08.2016) that Shri J.C. Bhardwaj was leading the strike of the workers and he also appearing before the Labour Commissioner, Labour Officer as well as before the Labour Court and he is well conversant with the legal procedure, whereas the management representative was not acquainted with legal procedure as such the prayer was made that they be not appointed as defence assistant of the petitioner. It is evident that after objection was raised, though the enquiry officer had not accepted the prayer of the petitioner to appoint Shri J.C Bhardwaj as defence assistant of the petitioner, but it was made clear that the petitioner can seek assistance of any other co-worker and any other person and even an opportunity was granted to the petitioner on his request to engage any other co-worker or outsider as his defence assistant and the matter was adjourned. Thereafter, the petitioner has not produced any other co-worker or outsider as his defence assistant.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others *Vs.* Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd., Banglore *Vs.* S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **"4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**
>
> **5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd.. In that case it was held that-**
>
> **"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."**
>
> **6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".**

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

> "6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration**

by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others vs M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. vs Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. *vs* Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. *vs* Maharashtra General Kamgar Union & Others (1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd., and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. *vs.* Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon i Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Moreover,

since, an order was passed by the enquiry officer whereby the objection of the management was accepted that Shri J.C. Bhardwaj could not be appointed as defence assistant of the delinquent/petitioner because they had led the strike of the workers and he was practicing before the Labour Court and are appearing before the Labour Commissioner and Labour Officer and are law knowing persons. The petitioner was granted opportunity to engage any other co-worker or outsider as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Anil Saklani were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, Shri Anil Saklani was cross-examined at length by the petitioner and more than 25 question were put to this witness during cross-examination. The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined his witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has not stepped into the witness box to state that he was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and he was given full opportunity to cross-examine the witnesses of the respondent management and to lead his evidence in defence. The petitioner has put more than 25 questions to some of the management witness(es) and now it does not lie in the mouth of the petitioner to say that he was not afforded fair opportunity to defend his case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead his evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

> **15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.**
>
> **16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma *(supra)*, on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not**

raised and considered. The judgment, therefore, is of no help to the respondent no. 2.

17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner was not stepped into the witness box to prove any such prejudice which is alleged to have been caused to him on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1994) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 12.12.2015.

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal-II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Sh. Anil Saklani is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-cum-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of

Tarkeshwar and that of Praveen Tomar and Anil Saklani clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram *Vs.* Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings Ex. RW-1/F, it has come in the enquiry proceedings that the petitioner himself has sought long adjournments and has moved application for adjournment of enquiry proceedings himself. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory under the Industrial Employment Standing Orders Act, 1946.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024
Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal *vide* its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scape goat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that it has come in the statement of respondent witness Mahender Kumar (RW-2) that similar chargesheets were also served to other workers and they were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scape goat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking Vs. Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court)**. On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated

10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd., *Vs.* Dharam Dass AIR 1958 SC 311, Deepak Nitrite *Vs.* N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd., *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**
>
> **9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.**

10. The above said agreement will be valid for a period of three years from the date of signature *i.e* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd., *Vs.* Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., *Vs.* Workers of Herbertson Ltd., 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., Vs. Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC *Vs.* MG Vittal Rao (2012) 1 SCC 442,**

Kanhaiyalal Aggarwal Vs. Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, *Vide* Binny Ltd., *Vs.* Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. *v.* Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty v. Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal *v.* Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. *v.* Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore *Vs.* Prem Singh. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala Vs. General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

Sd/-
(ANUJA SOOD),
Presiding Judge,
H.P. 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.	:	62 of 2021
Instituted on	:	24.02.2021
Preliminary issue framed on	:	20.06.2023
Decided on	:	28.12.2024

Vijay Krishan, s/o Sh. Kewal Ram, r/o Village Chattera, P.O. Kanda, Tehsil Kasauli, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager/Occupier, HPL Electric and Power Ltd., Village Shavela, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR.

For the respondent : Shri Rahul Mahajan, Advocate

ORDER

This order shall dispose off the preliminary issue, as framed by my Learned Predecessor on 20.06.2023, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs.* Ludh Budh Singh (1972) 1 SCC 595,** which reads as under:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

2. Briefly stated facts as it emerges from the statement of claim are that the petitioner had commenced his service career with the respondent company *w.e.f.* 05.06.2006 when he was engaged as Junior operator in the FG Department of the respondent and he remained in the employment till 10.10.2019 and thereafter his services have been dismissed after holding an improper, unfair, illegal and partial domestic enquiry due to his active trade unionism and this fact subsists beyond any doubt that he was served the chargesheets during the pendency of an Industrial Dispute over the demands raised by the workmen union and each and every workmen was contesting the demands as raised in demand notice dated 20.7.2015. The respondent management was prejudice against the office bearers and activists of the union. The petitioner was Secretary of the union which was a branch unit of the union *i.e.* Himachal Pradesh Industrial Workers Union (Regd.) AITUC which has been recognized by the management and management has also entered into a settlement with the union on 5.11.2015 and 10.6.2019. The management got prejudiced against the petitioner which resulted into passage of dismissal order against the petitioner. Furthermore, the petitioner was served with a letter vide which his services were dismissed *w.e.f.* 10.10.2019 by the respondent management illegally and malafidely in the name of so called domestic enquiry, which was conducted in the connivance with enquiry officer. The participation of the petitioner in the enquiry was made impossible as no defence assistant of his choice was allowed to him. Neither any document was supplied with the chargesheets nor during the enquiry proceedings to the petitioner. The full copy of the Certified Standing Orders of the company has not been supplied to the petitioner despite demand being raised time and again, as such no effective reply could be filed to the chargesheet served by the management against the petitioner. The petitioner submitted the reply of the chargesheets wherein he has denied the charges levelled against him. The petitioner is victim of the unwarranted punishment of dismissal from the employment based on the conspiracy hatched in order to oust him from services due to his trade union activities. The charges levelled against the petitioner were never proved as per the enquiry conducted by the enquiry officer wherein none of the witness even of the management side had

supported the charges contained in the chargesheets and it reveals that enquiry officer was never serious while preparing the enquiry report as the same was not prepared in conformity with the statements of witnesses and enquiry proceedings on the face of record. The enquiry officer exhibited some documents at the instance of management witnesses which were not pertaining to the petitioner. It is alleged that the petitioner made representation to the management for permitting him to appoint a defence assistance of his choice but his request has been turned down by the management without any justification. The petitioner again demanded documents and certified copy of standing orders of the company from the representative of the management but again the petitioner was informed by the management that there is no provision to supply the documents and copy of the certified standing orders to any individual. The enquiry officer has not conducted the enquiry in consonance with the principles of natural justice as during the course of enquiry neither the procedure of enquiry was explained nor the petitioner was allowed to engage the defence assistant and his demand for defence assistant was rejected in violation of clause 27-> of Certified Standing Orders without any justification. The enquiry officer allowed evidence to the facts which were not mentioned in the chargesheets. The enquiry officer proceed to record the evidence in the case and allowed the management to lead evidence beyond the scope of the chargesheet. The statements of the witnesses were recorded in order to accommodate the respondent and in order to provide undue advantage to it as no independent witness amongst the workman were examined. It is alleged that not a single workman or any official of the company came forward to state that he was stopped by the petitioner to enter the factory and none of the workmen have stated that anyone was instigated to go on strike by the petitioner but it was the decision of every workmen employed in the company to go on strike because the provident fund which had been deducted from their salary had not been deposited with EPFO and the same had been deposited later on when a settlement was arrived between the union and management on 5.11.2015. The evidence as produced by the management was insufficient to prove the charges levelled against the petitioner as none of the witnesses examined by the management had spoken a word about stopping them to enter the company for work by the petitioner as such there arose no occasion for the enquiry officer to prove the charges against the petitioner. The enquiry officer committed series of errors in the enquiry as the enquiry proceedings have no conformity with the enquiry report as the statement of the management witnesses were contradictory on material points. The petitioner was not allowed fair opportunity to respond the charges as levelled in the chargesheets. No procedure was settled by the management for the purpose of enquiry. A legal practitioner was engaged as an enquiry officer by the management while the petitioner was not given equal opportunity. Past service record of the petitioner/workman was also not taken into consideration while dispensing with the services of the petitioner as the management was in a haste to dispense with the services of the petitioner. Through this claim petition, petitioner has prayed that the domestic enquiry conducted by the company paid enquiry officer be declared null and void, inoperative and partial which has been conducted against the provisions of Certified Standing Orders of the company and also against the law of natural justice and the respondent company be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits with exemplary costs.

3. The lis was resisted and contested by the respondent on filing reply inter-alia raising preliminary objections qua maintainability, the reference is not competent and petitioner is gainfully employed. On merits, it was not disputed that the petitioner was engaged as junior Operator nor it was disputed that his services were dismissed vide letter dated 10.10.2019 for major misconduct. It was claimed that the services of the petitioner were dismissed for major misconduct levied against him vide chargesheets dated 4.9.2015, 11.9.2015 and 22.09.2015 which stood proved in domestic enquiry conducted by the respondent. Initially, petitioner had not filed reply to the chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 but during enquiry proceedings the petitioner filed reply to the chargesheets. When chargesheets were issued to the petitioner by the respondent, petitioner failed to file any reply as such the respondent was left with no other option but to conduct domestic enquiry by appointing enquiry officer to conduct the domestic enquiry in

respect of charges levied against the petitioner. An independent and impartial enquiry officer was appointed by the respondent, who conducted the domestic enquiry in respect of charges levied vide charge sheets dated 4.9.2015, 11.9.2015 and 22.9.2015, as per procedure prescribed under the Certified Standing Orders of the company by following the principles of natural justice and fair hearing. Enquiry officer intimated the date, time and place of enquiry to the parties. Petitioner participated in the enquiry and signed day to day enquiry proceedings and the petitioner also cross-examined the witnesses of the respondent. Petitioner also examined his witnesses. Petitioner was given all the opportunities in the enquiry proceedings to put forth his case. Enquiry officer submitted a detailed reasoned enquiry report on the basis of oral and documentary evidence produced by the respondent and petitioner before him. The charges levelled vide chargesheets stood duly proved against the petitioner in the domestic enquiry, thus second show cause notice was issued to the petitioner, which was replied by the petitioner but the respondent was not satisfied with the reply submitted by the petitioner to the 2nd show cause notice, thus, respondent dismissed the services of the petitioner vide letter dated 10.10.2019. Punishment of dismissal was commensurate with the misconduct which was committed by the petitioner. Enquiry conducted against the petitioner was just, fair and proper. Pendency of the conciliation proceedings or an industrial dispute does not bar issuance of chargesheet and conducting enquiry. It is denied that each and every workmen was contesting the demands raised in claim petition dated 20.7.2015. It was also denied that the petitioner was active member of HPL Electrical Power and Himachal Energy Workers Union Jabli, District Solan. It was claimed that the respondent has complied with all the terms and conditions of the settlement dated 5.11.2015 entered between the union and the respondent in its letter and spirit. It was denied that the respondent was prejudiced against the petitioner as such he was served with dismissal order dated 10.10.2019. The copy of certified standing orders was also provided to the petitioner. During the course of enquiry proceedings the petitioner never raised any objection that the documents are required to file reply to the chargesheet. The documents which were asked by the petitioner were provided to him. It is denied that the petitioner was victimized and his services were dismissed without any reason and justification. The services of the petitioner were dismissed after conducting a fair and proper domestic enquiry and the petitioner was told by the enquiry officer that he can bring any co-worker as defence assistant but he should not be a union leader. Each and every day enquiry proceedings were signed and received by the petitioner. It is denied that the provident fund which was deducted had not been deposited with the EPFO by the respondent. It is averred that there was complete loss of confidence of the respondent on petitioner and his services have been dismissed after conducting a domestic enquiry by following the proper procedure. The petitioner was provided with the copy of the chargesheet and Hindi translation. List of witnesses need not be appended with the chargesheet as the domestic enquiry is in house proceedings and are conducted as per the procedure prescribed under the Certified Standing Orders, Model Standing Order, Principles of Natural Justice and fair hearing. The presenting officer of the respondent was not an Advocate. He was an officer of the respondent. Full and final dues have been paid to the petitioner and there is no violation of natural justice and fair hearing and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which he denied the preliminary objections as taken by the respondent and reiterated the case as set up in the claim petition.

5. As has been discussed supra that vide order dated 20.06.2023, in the light of the judgment delivered by the Hon'ble Apex Court, in case titled as **Cooper Engineering Limited *Vs.* Sh. P.P Mundhe 1975 SCC (L&S) 443 and Delhi Cloth and General Mills Co. *Vs*. Ludh Budh Singh (1972) 1 SCC 595, this Court framed the following preliminary issue:**

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . *OPR*.

2. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The respondent has examined S/Shri Vishal Panwar, Enquiry Officer as RW-1 and Yashpal Sharma, Accounts Manager as RW-2.

7. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent 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

Relief : As per operative part of the Award/Order

REASONS FOR FINDINGS

Issues No.1

9. The onus to prove issues no.1 is on the respondent.

10. Coming to evidence led by the respondent, respondent has examined Shri Vishal Panwar, Enquiry officer as RW-1, who led his evidence by way of affidavit Ex. RW-1/A, wherein he has deposed that he was appointed as an enquiry officer to conduct the enquiry in respect of the charges levelled vide chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015 against the petitioner. He has stated that he conducted the enquiry in fair and proper manner and as per the principles of natural justice. He placed on record enquiry proceedings Ex. RW-1/B and enquiry report Ex. RW-1/C.

11. During cross-examination he deposed that he conducted the enquiry as per the certified standing orders. He denied that he had not gone through the standing orders and conducted the inquiry without following the procedure mentioned therein. He admitted that as per the certified standing orders clause 27-> the petitioner was entitled to engage a defense assistant of his own choice. He deposed that after he received application in this regard and the reply of the same was called from the management who had objected the proposed name of Sh. Anoop Prashar on the ground that he was also involved in the strike of the workers, as such he should not be appointed as defence assistant. He denied that he had conducted the enquiry on the directions of the management. He denied that the information of the next date of enquiry was given to the petitioner my the management. He further denied that the he was not regularly come for the enquiry on the dates fixed. He admitted that the management had handed over chargesheet to the petitioner in English. Self-stated that when the objection was raised by the petitioner during enquiry. he asked the management to supply the Hindi versions of the chargesheet to the petitioner which management had supplied to the petitioner. He admitted that the petitioner was suspended in the month of September, 2015. He denied that the date of enquiry was fixed by the management. He denied that on 02.07.2016 petitioner was present during enquiry and he did not mark his presence. He admitted that on 27.08.2016 he had fixed the date of enquiry but on that date no proceedings were taken due to absence of the petitioner. He admitted that after 22.10.2016 date of enquiry was fixed as 09.03.2017. He admitted that as per standing orders the enquiry had to be concluded within six months. Self-stated that enquiry was delayed due to adjournments sought by the petitioner which fact is mentioned in the enquiry proceedings. He admitted that the enquiry proceedings started on 20.10.2015 and were concluded on 30.03.2019. He denied that the enquiry report is not based upon the facts, statements of witnesses and documents on record. He denied that the enquiry had been conducted in violation of standing orders and principles of natural justice.

12. The other witness examined by the respondent is Shri Yashpal Sharma, Accounts Manager of respondent company, who stepped into the witness box as RW-2 and led his evidence by way of affidavit Ex. RW-2/A, which is just a reproduction of the averments as made in the reply. He also placed on record copy of resolution Ex. RW-2/B, details of computer generated suspension allowance paid to the petitioner Ex. RW-2/C, bank statements Mark-RA, copies of chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3, suspension letter Ex. RW-2/E, letter dated 01.10.2015 mark-RB, copy of second show cause notice (in English) Ex. RW-2/F and its Hindi version Ex. RW-2/G. He deposed that enquiry report was also sent with the 2nd show cause notice. Reply to 2nd show cause notice Ex. RW-2/H, dismissal letter in English Ex. RW-2/J and its Hindi version Ex. RW-2/K, full and final settlement of accounts Ex. RW-2/L along with the amount details Mark-RC, certified standing orders Ex. RW-1/D and settlement dated 05.11.2015 is mark-RD.

13. During cross-examination, he admitted that the chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3 were never issued by him nor it bears his signatures. He also admitted that no documents are annexed with the chargesheets Ex. RW-2/D-1 to Ex. RW-2/D-3. He deposed that the charge sheet was not received by the petitioner. He denied that the chargesheet is not in consonance with the certified standing orders. He also denied that at the instance of the management, enquiry officer lingered on the enquiry proceeding for four years. He further denied that the enquiry was lingered on just to harass the petitioner. He admitted that he was not present during the enquiry proceedings. He denied that the similar chargesheets were handed over to 37 other workers and he further denied that the 35 workers were absolved from the similar charges. He denied that the management wanted to turn out the petitioner and other workers as they were office bearers of Trade Union.

14. This is the entire evidence which has been led by the respondent.

15. In order to rebut the evidence of the respondent, opportunity was granted to the petitioner to lead his evidence, but no evidence was led by the petitioner in support of his case and AR for the petitioner vide his separate statement closed the evidence of the petitioner on preliminary issue on 06.09.2024.

16. Learned AR for the petitioner had argued that before starting the enquiry, the enquiry officer did not explain the procedure which was to be adopted during the course of the enquiry by the enquiry officer nor the documents were supplied to the petitioner along with the charge sheet. He vehemently argued that in gross violation of Section 27-> of the certified standing orders, the petitioner was not allowed to be assisted by defence assistant of his choice and the application of the petitioner/ workmen was rejected straightway by the enquiry officer. The enquiry was conducted against the provisions of certified standing orders as such the enquiry is liable to be set aside. Ld. AR also took this Court through the written submission placed on record.

17. On the other hand, learned counsel for the respondent had argued that the enquiry against the petitioner has been conducted for major misconduct in accordance with the principles of natural justice and Certified Standing Orders. Petitioner has been dismissed from service vide order dated 10.10.2019 and before dismissing the services of the petitioner, 2nd show cause notice was served upon him. Ld. Counsel argued that the copies of day to day enquiry proceedings were supplied to the delinquent workman and he was afforded full opportunity to cross-examine the witnesses of the management and the witnesses of the management were cross-examined by the petitioner at length and to some of the witnesses more than 40 questions have been put by the petitioner during cross-examination. Not only this, the delinquent petitioner was afforded full opportunity to lead his own evidence in defence.

18. At the very inception it would appropriate to note that the word "misconduct" is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee's under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should not have done and does not do what he should have done or any un-business like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

19. Coming to the case in hand, the first and foremost question which was raised by the Ld. AR for the petitioner is that the documents which were relied by the enquiry officer and management, were not supplied to the workman with the chargesheets. It was contended forcefully that the respondent management and the enquiry officer were of predetermined mind to remove the petitioner from service. The petitioner was deprived of the opportunity to reply the charges contained in the chargesheets at the appropriate stage i.e before ordering the enquiry against him which is a clear cut violation of Certified Standing Orders. In support of the aforesaid plea of the petitioner, Ld. AR for the petitioner has placed reliance of **Pepsu Road Transport Corporation *Vs.* Lachhman Dass Gupta and another 2002-1-LLJ-544 SC 288 and 2011-II LLJ 627 SC case titled as Union of India and Ors *Vs.* S.K Kapoor**. He also placed reliance on the judgment of Hon'ble Supreme Court in case titled as **Pawan Kumar Aggarwal *Vs.* General Manager-II and appointing authority State Bank of India and ors 2016 LLR 159**. On the strength of these authorities he argued that since the documents were not supplied to the petitioner along-with the chargesheets, the enquiry is nullity.

20. The respondent management has placed on record, day to day enquiry proceeding Ex. RW-1/B.

21. So far as this plea is concerned, it is evident from the enquiry proceedings Ex. RW-1/B that the enquiry was taken up on 19.10.2015 on which date Shri Manohar Sharma had appeared as presenting officer but Vijay Kumar worker had not appeared. Directions were issued to the management to send notice to the petitioner to appear in the next date of hearing. It is evident from the proceedings dated 12.12.2015, the petitioner has not raised any objection qua the appointment of the enquiry officer. It was also disclosed to the petitioner that the proceedings would be taken up as per the principles of natural justice. The procedure of enquiry was explained to both the parties. The petitioner was also informed that he can bring a defence assistant to defend his case. The petitioner had stated that he had received the copy of chargesheets dated 4.09.2015, 11.9.2015 and 22.9.2015 and had requested the enquiry officer to provide him Hindi version of the same. Accordingly, enquiry officer has directed the management to supply the Hindi version of chargesheets and standing orders to the petitioner. It is also evident from the enquiry proceedings Ex. RW-1/B that Hindi version of the chargesheets as well as standing orders were supplied to the petitioner. During the enquiry proceedings, the petitioner neither raised any objection qua the appointment of enquiry officer nor raised any objection that some documents were not supplied to him due to which he could not file reply. Since, no objection was raised by the chargesheeted worker/petitioner before the enquiry officer with regard to any of the documents which he now alleges to be required for filing reply, the chargesheeted worker/petitioner is deemed to have

waived off this objection. Having participated in the enquiry proceedings without any demure whatsoever and thereafter the chargesheeted worker/petitioner has cross-examined the witnesses of the management as such the petitioner at this stage cannot claim that prejudice has been caused to him due to non-supply of the certain documents prior to initiation the enquiry proceedings. So far as the case law cited by the Ld. AR for the petitioner, as discussed supra, is concerned, the chargesheets have been placed on record as Ex. RW-2/D1 to Ex. RW-2/D3. These chargesheets do not suggest that any documents were annexed by the management with these chargesheets. So far as the Standing Orders are concerned, it has come in the enquiry proceedings that the copy of the same was demanded by the petitioner in Hindi and the same was supplied to him by the respondent management on the directions of the enquiry officer.

22. Though reliance was placed on **2014 LLR 931 M/s PCI Ltd., (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II Gurgaon and another**. However, in this case certain documents submitted by the petitioner were not considered by the enquiry officer and the copy of the standing order was not supplied. Coming to the case in hand, the copy of the standing orders was supplied to the petitioner in Hindi which was admittedly received by petitioner and there is no evidence on record to establish that the documents which were filed by him during the enquiry proceedings were not taken on record. It is evident from the enquiry proceedings that the list of the witnesses was supplied to the petitioner vide letter dated 14.5.2016 which was received by him on 14.5.2016. The statements were also supplied to the petitioner in advance so as to enable him to cross-examine the witnesses of the management. Petitioner at no point of time had moved any application that some documents were not supplied to him rather after the Hindi version of document sought by him, he did not raise any objection qua any document.

23. It would be appropriate at this stage to point out here that the petitioner has not stepped into the witness box to state his case on oath that which material document was not supplied to him and what prejudice was caused to him due to non-supply of such document. In the absence of any such evidence, it cannot be presumed that the principles of natural justice have been violated and any prejudice has been caused to the petitioner during the enquiry proceedings.

24. Now, coming to the other point which has been raised by the petitioner that the petitioner has not been allowed to engage a person of his choice as per the provisions of Section 27-> of Certified Standing Orders. At this stage, it would be apt to go through the relevant provision of Certified Standing Orders (English version) which reads as under:

> "**27 (i) At such an enquiry, the concerned employee shall be entitled to be assisted by any of his co-worker or outsider in the interest of fair play and justice."**
>
> It was contended by the Ld. AR for the petitioner that the petitioner had made a written request *vide* letter dated 14.05.2016 received by the management on 25.6.2016 for the appointment of Shri Anoop Prashar who was Senior Vice President of AITUC as his defence assistant as per the provisions of Certified Standing Orders, but such permission was declined as such great prejudice has been caused to the case of the petitioner and he could not defend his case properly.

25. Admittedly, during the course of enquiry proceedings, the petitioner had made a request for appointment of Shri Anoop Prashar as his defence assistant. It is evident from the record that after making of request by the petitioner for the appointment of Shri Anoop Prashar as his defence assistant, the respondent company had objected to such application vide letter received by petitioner on 23.7.2016 on the ground (as mentioned in proceedings dated 23.7.2016) that Shri Anoop Prashar was leading the strike of the workers and he was close associate of Shri J.C.

Bhardwaj and Anoop Prashar was also appearing before the Labour Commissioner, Labour Officer as well as before the Labour Court and he is well conversant with the legal procedure, whereas the management representative was not acquainted with legal procedure as such the prayer was made that they be not appointed as defence assistant of the petitioner. It is evident that after objection was raised, though the enquiry officer had not accepted the prayer of the petitioner to appoint S/Shri J.C Bhardwaj as defence assistant of the petitioner, but it was made clear that the petitioner can seek assistance of any other co-worker and any other person and even an opportunity was granted to the petitioner on his request to engage any other co-worker or outsider as his defence assistant and the matter was adjourned. Thereafter, the petitioner has not produced any other co-worker or outsider as his defence assistant.

26. Now, the question arises whether the right to engage a defence assistant is an absolute right or not. The Hon'ble Apex Court in case titled as **N. Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd., Jamshedpur, 1960 SCC Online SC 75** has held that "**a workman against whom the enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance".**

27. Judgment in N. Kalindi's case was followed by the Hon'ble Supreme Court in case titled as **M/s Brooke bond India Pvt. Ltd., Banglore Vs. S.Subba Raman and Another, 1961 SCC Online SC 6** wherein the Hon'ble Apex Court held that:

> **"4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.**
>
> **5. The matter is now concluded by the decision of this Court in Kalindi *v.* Tata Locomotive and Engineering Co. Ltd.. In that case it was held that-**
>
> **"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."**
>
> **6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in Kalindi's case we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs".**

28. It has been held by the Hon'ble Apex Court in case titled as **Indian Overseas bank *Vs.* Indian Overseas bank Officers' Association and Another, 2001 (9) SCC 540** that right to be represented in domestic enquiry is not absolute right. The relevant para of the judgment is reproduced as under:

"6. **We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation. [N. Kalindi & Others vs M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur (AIR 1960 SC 914); Dunlop Rubber Co. (India) Ltd. *vs* Their Workmen (AIR 1965 SC 1392); Crescent Dyes and Chemicals Ltd. *vs* Ram Naresh Tripathi (1993(2) SCC 115) and Bharat Petroleum Corporation Ltd. *vs* Maharashtra General Kamgar Union & Others (1999(1) SCC 626]. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself**.

Similar is the judgment of Hon'ble Supreme Court in case titled as **Cipla Ltd., and Others *Vs.* Ripu Daman Bhanot and another (1999) 4 SCC 188** wherein the Hon'ble Supreme Court has held as under:

"13. In N. **Kalindi and Ors. *vs.* Tata Locomotive & Engineering Company Ltd.**, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in **Dunlop Rubber Company *vs.* Workmen**, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in **Crescent Dyes and Chemicals Ltd. *vs.* Ram Naresh Tripathi**, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in **Bharat Petroleum Corporation Ltd. *vs.* Maharashtra Genl**. Kamgar Union & Ors., it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him".

29. Though, Ld. AR for the petitioner has placed reliance on case titled as **M/s PCI Ltd. (Engg. Division) Gurgaon *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and Another 2014 LLR 931 Punjab & Haryana High Court** and on the strength of this authority, it was argued by the AR for the petitioner that several parameters were established for validation of an enquiry and as such it was pronounced that disallowing a defence assistant to the workman shall tantamount to a critical defect in the enquiry as such the enquiry under such circumstances shall have no validity in the eyes of law. So far as this authority is concerned, the same is distinguishable on facts. In this case the Hon'ble Punjab & Haryana High Court has held that it was open to the employer to adduce evidence before the Labour Court afresh to justify his action and if such an opportunity is asked for, the Tribunal has no power to refuse. Moreover, an order was passed by the enquiry officer whereby the objection of the management was accepted that Shri Anoop Prashar could not be appointed as defence assistant of the delinquent/petitioner because they had led the strike of the workers and he was practicing before the Labour Court and are appearing before the Labour Commissioner and Labour Officer and is law knowing person. The petitioner was granted opportunity to engage any other co-worker or outsider as his defence assistant, but despite granting opportunity the petitioner has not engaged any other co-worker or outsider as his defence assistant to defend his case before the enquiry officer, as such the petitioner cannot be allowed to raise objection at this stage that he was not allowed to be represented through defence assistant of his choice during the enquiry proceedings.

30. Ld. AR for the petitioner had also placed reliance on the judgment titled as **LIC of India and Anr. *Vs.* Ram Pal Singh Bisen 2010 LLR 494** and on this strength of this judgment it was argued that the documents exhibited by witnesses Shri Devinder Kumar were never sanctified and mere admission of documents or marking of exhibits does not amount to its proof.

31. So far as these arguments of Ld. AR for the petitioner are concerned, Shri Devinder Kumar was cross-examined at length by the petitioner and more than 40 question were put to this witness during cross-examination. The conclusion which has been drawn by the enquiry officer is based on the oral as well as documentary evidence which has been led on record and in view of the facts which emerged in the cross-examination of the witness(es). It is not the case where only on the basis of documents, the enquiry officer has come to the conclusion that the charges stood proved. In the case as cited by the AR for the petitioner (supra), no oral evidence was led by the Appellant Corporation, but coming to the case in hand, the management witness(es) were examined and thereafter the petitioner has also examined his witness(es) in defence and the enquiry officer on the basis of oral as well as documentary evidence had reached to the conclusion that the charges against the petitioner stood proved.

32. Now, coming to the plea raised by the AR for the petitioner that the domestic enquiry has not been conducted as per the certified standing orders and as per the principles of natural justice, but the petitioner has not stepped into the witness box to state that he was discriminated at any point of time during the enquiry proceedings or there was any violation of principles of natural justice. From the perusal of enquiry proceedings, it the clear that day to day enquiry proceedings were signed by the petitioner and he was given full opportunity to cross-examine the witnesses of the respondent management and to lead his evidence in defence. The petitioner has put more than 40 questions to some of the management witness(es) and now it does not lie in the mouth of the petitioner to say that he was not afforded fair opportunity to defend his case during enquiry. It is also evident from the enquiry record that the sufficient opportunities were granted to the petitioner to lead his evidence and thereafter the enquiry officer concluded the enquiry and report was submitted by him to the management.

33. Ld. AR for the petitioner had also argued that the suspension allowance was not paid to the petitioner which also vitiate the enquiry proceedings. So far as this plea is concerned, the Hon'ble High Court of Allahabad in **(2001) LLR 1004, Allahabad High Court,** has held that:

15. Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. It must be coupled with real prejudice.

16. In the judgment rendered in State Bank of Patiala and Others V. S.K. Sharma *(supra),* on which reliance has been placed by the learned counsel for the respondent no. 2 the question of non-payment of subsistence allowance was not raised and considered. The judgment, therefore, is of no help to the respondent no. 2.

17. In the instant case, respondent no. 2 has not pleaded that he was prevented from attending the enquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance. It is not dispute that he attended the enquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not justified in allowing the review application and in setting aside the order of removal dated 27.08.1974 and the order of dismissal of appeal dated 11.05.1997. Therefore, the impugned judgment of the Tribunal is liable to be quashed.

34. Coming to the case in hand, no such pleadings have been made by the petitioner that any prejudice was caused to him and he could not be defend the enquiry due to non-payment of subsistence allowance. Otherwise, also it has come in evidence that subsistence allowance was paid to the petitioner after few months. Petitioner was not stepped into the witness box to prove any such prejudice which is alleged to have been caused to him on account of non-payment of subsistence allowance.

35. It was also argued by the Ld. AR for the petitioner that an Advocate was appointed as an enquiry officer, who was representing the respondent in some other cases and was also paid charges for conducting enquiry by the respondent, however, in view of law laid down in **(1964) SCC online SC-9, (1973) SCC 259, (2008) 7 SCC 639, (2009) 10 SCC- 32 and (2012) LLR 732, Bombay High Court**, there is no bar for the Lawyer or Advocate even earlier appearing or defending matters on behalf of company to be appointed as an Enquiry Officer. Moreover, the petitioner had not raised any objection for the appointment of Advocate as an enquiry officer during the enquiry, which fact is evident from enquiry proceedings dated 12.12.2015.

36. Now, coming to the other argument raised by the petitioner that material on record nowhere confirm the allegations levelled in the chargesheets against the petitioner. It was argued that the respondent management and the enquiry officer were predetermined to remove the petitioner from service as the enquiry officer has not deem it appropriate to consider the statement(s) of the witness(es) during enquiry proceedings and gave the findings which has no conformity with the statements of the said witness(es). The enquiry officer has held that the petitioner/workman was guilty of so called misconduct which was never proved during the course of enquiry. In support of such contention Ld. AR for the petitioner has placed reliance case titled as **M/s PCI Ltd. Engineering Division Gurgaon *V/s* Presiding Officer Industrial Tribunal-II Gurgaon and another, 2014-LLR 931**. So far as this contention is concerned, if the statement of witness/es especially Shri Devinder Kumar is seen, he has stated that the petitioner along-with his associates and co-accomplices gathered in a planned and concerted manner gathered at the main gate of respondent factory and they threatened the workers who were willing to perform their duties and the workers were not allowed to enter in the factory to perform their duties. He further stated that the officials of the company tried to counsel petitioner and his co-accomplices not to stop the work and ingress and egress of the managerial staff, workers, customers and also vehicles. He also

stated that the petitioner along-with his associates in a planned and concerted manner went on strike on 3.9.2015, when the conciliation proceedings were pending before the Labour-*cum*-Conciliation Officer Solan and stay was granted by the Ld. Civil Judge (Senior Division) Court No.1 Kasauli, District Solan, prohibiting agitation, shouting of slogans raising defamatory and inflammatory language, blocking the ingress and egress. The labour commissioner vide order dated 15.9.2015 prohibited the continuation of strike but due to acts of petitioner and his co-associates, atmosphere of fear and lawlessness was created in and around the factory. Aforesaid statements of Devinder Kumar and that of Puran Chand and Suresh Chand clearly establishes the charges against the petitioner. Even, if the co-workers have not been examined by the management that would not make the enquiry doubtful. With the statements of management witnesses charges against the petitioner have been duly proved as such non-examination of the co-workers of the petitioner, in any way would not make the enquiry proceedings null and void.

37. The Ld. Counsel for the respondent had filed a plethora of judgments on points such as adverse inference and concepts of principles of natural justice, but in view of my discussions as made above, since this Court/Tribunal has comes to the conclusion that the enquiry was conducted in fair and proper manner, no fruitful purpose will be solved by elaborately discussing these judgments cited by the Ld. Counsel for the respondent on these points.

38. Ld. AR for the petitioner has also argued that the enquiry proceedings were deliberately protracted to an unjustifiable extent for more than four years and reliance was placed on the judgment titled as **KVS Ram Vs. Banglore Metropolitan Transport Corp., 2015 LLR 229**. In this case the enquiry proceedings were submitted after a period of twelve years without any plausible explanation. However, in the case in hand the enquiry was completed in four years. Perusal of enquiry proceedings clearly shows that the reasons for delay in the enquiry were recorded which fact is also evident from enquiry proceedings Ex. RW-1/B, it has come in the enquiry proceedings that the petitioner himself has sought long adjournments and has moved application for adjournment of enquiry proceedings himself. Since, reasons for delay in inquiry have been recorded as such it cannot be held that there is unjustifiable delay in concluding the enquiry. Otherwise also it is settled that the provisions of completing enquiry within a prescribed period are directory in nature and not mandatory under.

39. In view of my aforesaid discussion, it is held that the domestic enquiry conducted against the petitioner is fair and proper as such, the preliminary issue is decided in favour of the respondent and against the petitioner.

40. Ld. AR for the petitioner also argued that some other workers who were chargesheeted with same charges as that of petitioner, were absolved by the respondent management, while the petitioner was made scapegoat. In support of this contention Ld. AR had placed reliance on **Pawan Kumar Aggarwal's** case cited supra. So far as this contention is concerned, as a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

41. Let the parties be heard on quantum of punishment. Order to continue.

Announced in the open Court today on this 28th Day of December, 2024.

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

Re-called/Taken up again.

30.12.2024

Present: Shri J.C. Bhardwaj, AR for the petitioner

Shri Rahul Mahajan, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri J.C. Bhardwaj, AR for the petitioner has vehemently argued that the dismissal of the petitioner from services, by the respondent company after conducting domestic enquiry is too harsh. He further contended that this Court/Tribunal *vide* its award/order dated 28.12.2024 has concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper and the matter is now before this Court on hearing arguments on quantum of punishment awarded to the petitioner. It was argued by him that dismissal of the petitioner from services on the conclusion of the enquiry is the most harsh punishment which could be awarded to any workman, which is also disproportionate to the allegations levelled against the petitioner. The respondent company was harsh on ordering dismissal of the petitioner leaving the petitioner out of job and has put stigma on his entire carrier. The petitioner is a poor person and he is the only bread winner of his family. The punishment awarded by the respondent company on the basis of enquiry is unjust and unkind. He further contended that similarly situated workers against whom similar charges were levelled, have been let off, whereas the petitioner has been made scape goat. He contended that it is evident from settlement dated 5.11.2015 that thirty seven workers were placed under suspension and disciplinary proceedings were initiated against them, though twenty five workers were taken back but petitioner as well as other nine workers have been dismissed from the service. He also contended that the settlement dated 5.11.2015 coupled with the record of the enquiry, chargesheets, it stands established that similar chargesheets were also served to some other workers, who were taken back. Ld. AR contended that similar chargesheets were served on similarly situated workers and they were lightly let off, whereas the petitioner has been made scape goat. Similar chargesheets were served upon some other workers against whom no enquiry was conducted as such there is complete discrimination in the attitude of the respondent towards the petitioner. He lastly submitted that doctrine of proportionality is to be applied to the facts and situation of the case and the punishment is disproportionate to the gravity of misconduct as such it would be appropriate to alter the punishment so imposed.

2. *On the other*, Shri Rahul Mahajan, Advocate for the respondent company submitted his detailed arguments and on the strength of these detailed arguments he contended that punishment is just and proper. He further contended that since the Court has come to the conclusion that the enquiry is fair and proper, this Court cannot interfere with the punishment as awarded to the petitioner. Ld. Counsel for the respondent has made written submissions which will be taken up hereinafter.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Now, coming to the written submissions made by the Ld. Counsel for the respondent, the first and foremost submission raised by the Ld. Counsel for the respondent is that the powers of the Labour Court under Section 11-A can only be invoked if the order is of dismissal or discharge. He argued that in this case the services of the petitioner have been terminated as such Section 11-A of the Act has no application. On this point he also placed reliance on case titled as **South Indian**

Cashew Factory Workers Union *Vs.* Kerala State Cashew Development Corporation Ltd. and others (2006) 5 SCC 201, Indian Iron and Steel Company Ltd. *Vs.* Workmen (1958 SCR 667), Workmen *Vs.* Firestone Tyre and Rubber Co. of India (P) ltd. (1973) 1 SCC 813 and Chandigarh Transport undertaking *Vs.* Presiding Officer Labour Court Union Terriotroy Chandigarh & Ors., (2024) LLR 1316 (Punjab & Harayana High Court). On the strength of these judgments, he contended that in view of ratio of these judgments, this Court cannot interfere with the punishment as the services of the petitioner have been terminated. So far as this plea is concerned the same is against the factual position on record. It is amply clear from the order dated 10.10.2019 that the services of the petitioner have been dismissed after conducting domestic enquiry. Since, the services of the petitioner have been dismissed, the provisions of Section 11-A of the Act are applicable to the case in hand.

5. Now, coming to second submission as raised by the Ld. Counsel for the respondent. It was argued that the allegations of major misconduct were levelled against the petitioner *vide* chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015. The article of charges have been reproduced by the Ld. Counsel for the respondent and he had argued that the petitioner had not only participated in illegal strike but he was also leading the strike, as such the Court cannot interfere with the punishment. Reliance was placed on the judgment of Hon'ble Apex Court in case titled as **U.B Dadha & Ors., *Vs.* Gujrat Ambuja Cement Pvt. Ltd., (2007) 13 SC 634, Model Mill Nagpur Ltd., Vs. Dharam Dass AIR 1958 SC 311, Deepak Nitrite *Vs.* N.H Rana (2001) SCC Online Gujrat 296, Mahindra & Mahindra Ltd., *Vs.* N.B Narawade (2005) 3 SCC 134 and Jarnail Singh *Vs.* Presiding Officer Labour Court, Patiala & Ors., (2007) LLR 245**. On the strength of these authorities, Ld. Counsel for the respondent argued that since chargesheets dated 4.9.2015, 11.9.2015 and 22.9.2015, stood proved, the punishment of dismissal is justified and proper which cannot be interfered by the Court. So far as these judgments are concerned, though it has been established that the petitioner has taken part in the strike and other charges were also proved against him, but certain factors like punishment being disproportionate of the gravity of misconduct or disproportionate punishment and punishment being discriminatory as compared to other workers who were lightly let off are some of the factors which certainly requires consideration of this Court. The discretion which can be exercised under Section 11-A of the Act is available, if the punishment is discriminatory and disproportionate to the gravity of misconduct and other mitigating circumstances such as if the past conduct of the workman has not been taken into consideration.

6. Coming to the case in hand, no past misconduct of the petitioner has been alleged or proved during enquiry. Similar situated workmen against whom similar charges were levelled were let go lightly whereas the petitioner was awarded severest punishment of dismissal. Though this Court has come to the conclusion that the charges against the petitioner stood proved, however, this Court cannot loose sight of the fact that all the workers of respondent company had proceeded on strike. The strike started on 3.9.2015 and it ended with entering into settlement dated 5.11.2015. It is also admitted that the settlement dated 5.11.2015 was executed which fact has not been disputed by both the parties. As per settlement dated 5.11.2025, both the parties had mutually agreed in clauses 6, 9 & 10 as under:

> **"6. It was discussed that 37 workers have been placed under suspension and disciplinary proceedings have been initiated against them. It has been agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. As for the other 12 they will remain under suspension and enquiry will carry on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest 25, it has been agreed upon they will join duty on or before 10th November, 2015.**

9. Both the parties to the dispute mutually agreed to withdraw any cases that may have been filed by them against each other in any Court/Tribunal. It is also agreed upon that any FIR that may have been lodged by either of the parties to the dispute against each other then the same would be requested to be withdrawn.

10. The above said agreement will be valid for a period of three years from the date of signature *i.e.* till 9th November, 2018 and in view of this agreement the strike is called off immediately and the workers will start resuming duty.

7. The Ld. Counsel for the respondent had argued that the settlement has to be taken as a whole and not in part. He placed reliance on **Tata Engineering & Locomotive Company Ltd., Vs. Their Workmen 1981-4 SCC 627, Herbertson S. Ltd., *Vs.* Workers of Herbertson Ltd., 1976-4 SCC 736**, **State of Uttranchal *Vs.* Jagpal Singh Tyagi (2005) 8 SCC 49, National Engineering Industries Ltd. *Vs.* State of Rajasthan (2000)1 SCC 371 and Hindustan Fasteners Pvt. Ltd., *Vs.* Nasik Workers Union (2009) II SCC 660** and on the strength of these authorities, Ld. Counsel for the respondent had argued that the settlement was accepted and acted by the union and respondent and it cannot be now taken in bits and pieces by the petitioner. Petitioner cannot take benefit of any of the provisions of settlement of leaving the other one. He also argued that the settlement dated 5.11.2015 is to be read in its entirety.

8. So far as this submission is concerned, this Court has no reason to disagree with these judgments, but I am of the considered view that even if the settlement dated 5.11.2015 is taken as a whole, it clearly establishes on record that 37 workers had been placed under suspension and disciplinary proceedings were initiated against them. It was agreed upon by both the parties that out of these 37 suspended workers, 25 will be taken back immediately after revoking their suspension. However, the enquiry initiated against them will proceed and no major penalty will be imposed upon these 25 workers. So for the other 12 workers are concerned, it was agreed vide settled dated 5.11.2015 that they will remain under suspension and enquiry will be carried on. The management will be at liberty to identify the 12 people who will remain under suspension and for the rest of 25 workers it had been agreed upon that they will join the duties. Out of these 12 workers, the enquiries against 10 workers have been held to be just and fair by this Court (These ten references have been adjudicated simultaneously by the Court.) Without separating the clauses of settlement dated 5.11.2015 and without taking the clauses of the same in bit and pieces, it stands established on record that 37 workers were placed under suspension and disciplinary proceedings were initiated against them, 25 workers were let off with minor or without penalty. They were not dismissed from service, whereas the petitioner has been awarded severest punishment of dismissal. If the settlement is taken in whole than also the punishment awarded to the petitioner on the face of it appears to be discriminatory. Settlement dated 05.11.2015 does not suggest that it was agreed that the punishment of dismissal would be awarded to 12 workers against whom the enquiry(s) were agreed to be continued. Thus, even if settlement dated 05.11.2015 is taken in its entirety, it points towards the discriminatory punishment awarded to the petitioner.

9. Reliance was placed on **(2013) LLR 190 Delhi High Court** and on the strength of this authority Ld. Counsel for the respondent argued that this Court cannot interfere with the findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse and if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings of departmental enquires. So far as this judgment is concerned, this Court has no reason to disagree with that, but it is quite evident from the record that the petitioner has been dealt harshly by the respondent as compared to other similarly situated workers who also went on strike and against some of them similar charges were levelled.

10. Through submission no.5 it was submitted that the petitioner had indulged into major misconduct which stood proved during the enquiry and since the misconduct was major as such the petitioner has lost confidence of the employer. Reliance in this behalf were also placed on case titled as **Karnataka SRTC Vs. MG Vittal Rao (2012) 1 SCC 442,**

Kanhaiyalal Aggarwal *Vs.* Gwaliior Sugar Co. Ltd., (2001) 9 SCC 609, *Vide* Binny Ltd., Vs. Workmen (1972) 3 SCC 806, AIR 1972 SC 1975], Binny Ltd. *v.* Workmen [(1974) 3 SCC 152: 1973 SCC (L&S) 444 : AIR 1973 SC 1403], Anil Kumar Chakraborty v. Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328: 1982 SCC (L&S) 249: AIR 1982 SC 1062], Chandu Lal *v.* Pan American World Airways Inc. [(1985) 2 SCC 727: 1985 SCC (L&S) 535: AIR 1985 SC 1128], Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) SCC (L&S) 25, AIR 1987 SC 229 and Pearlite Liners (P) Ltd., *Vs.* Manorama Sirsi (2004) 3 SCC 172, 2004 SCC (L&S) 453: AIR 2004 SC 1373, Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67, Punjab Diary Development Corporation Ltd., and another *Vs.* Kala singh & Ors (1997) 6 SCC 159 and 2019 SCC Online Del. 8258 State Bank of Travancore *Vs.* Prem Singh. On the strength of these authorities, Le. Counsel for the respondent had argued that there is a complete loss of confidence on the petitioner by the respondent management in view of his proved misconduct, thus, the punishment which has been awarded to the petitioner is just and proper as such he cannot be afforded/ ordered to continue in the services as it would embarrass the employer and would be detrimental to the discipline and security of the establishment.

11. So far as this contention is concerned, since, the other workers who also went on strike and who were also suspended along with petitioner and enquiries were ordered against them, were taken back with minor punishment, it cannot be presumed that if the petitioner is taken back by the respondent it would embarrass the respondent or would be detrimental to the interest of respondent establishment. Since, similarly situated other workers were taken back it would be harsh, if the petitioner is dismissed from service.

12. Ld. Counsel for the respondent had submitted that the petitioner has not stepped into the witness box to prove that similar chargesheets were served on other workers nor any chargesheets of the other co-worker has been placed on record as such it cannot be presumed that similar charges were levelled against some of the workers who have been taken back in job. Though, the petitioner has admittedly not stepped into the witness box, but his Court cannot ignore the record of the case file which clearly establish through settlement dated 5.11.2015 as well as chargesheets, statement of witnesses on record, recorded during the enquiry or before this Court that all the workers went on strike and similar chargesheets were also served upon some other workers, but they were lightly let go. It is settled position of law that that while considering the management decision to dismiss the services of the workmen, the Labour Court can interfere with the decision of the management, if it is satisfied that punishment of guilty of the workmen concerned is discriminatory or some of the workers facing similar charges were lightly let go. **Hon'ble Supreme Court in case titled as Pawan Kumar Agrwala *Vs.* General Manager-II and Auth. State Bank of India and Ors., 2016 LLR 159**, that "punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment".

13. Coming to the case in hand, it stand establish on record that all the workers of the respondent company had gone on strike and some of them were chargesheeted but they were taken back by imposing minor penalty or without any penalty, whereas, the petitioner has been punished with severest punishment of dismissal. So, the punishment of the petitioner is vitiated being discriminatory. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. The disciplinary authority has failed to give any valid reason for not imposing anyone of the lesser punishment or for not imposing similar punishments which were awarded to similarly situated workers/employees.

14. 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. The **Hon'ble Apex Court in Raghubir Singh *V.* General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301: 2014 LLR 1075, and Jitendera Singh Rathor *Vs.* Baidyanath Ayurved Bhawan Ltd., (1984) 3 SCC 5** has held that the denial of back-wages to the workman itself is an adequate punishment for the proved misconduct against him.

15. Ld. Counsel for the respondent has also made submission that since the petitioner not led any evidence to prove that he was not gainfully employed, he is not entitled to back wages. In support of his contention he has placed reliance on case titled as **Kendriya Vidyalaya Sangathan Vs. SC Sharma (2005) 2 SCC 363, UP State Brassware Corp. Ltd., *Vs.* Uday Narain Pandey (2006) 1 SCC 479 and Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalya (2013) 10 SCC 324**. I have no reason to disagree with this submission of Ld. Counsel for the respondent. Admittedly, the petitioner has not led any evidence to show that after his dismissal he was not gainfully employed. In the absence of any evidence on record, it is held that the petitioner cannot be held entitled to any back-wages. However, in view of my foregoing discussion, I am of the considered view that keeping in view overall facts and circumstances of this case, the penalty of dismissal as imposed by the respondent is disproportionate and discriminatory. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages in itself a major punishment imposed upon the workman.

16. In view of the above discussion, the petitioner is ordered 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. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the open Court today on this 30th Day of December, 2024.

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

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Dated the 12th December, 2024

No.: LEP-E/1/2024, 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 **Presiding Judge, Labour Court-*cum*-Industrial Tribunal, Dharamshala,** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette. :—**

Sr. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	71/17	Tulsi Ram	E.E.I & PH, Killar	04.10.2024
2.	23/20	Nirmla Devi	Principal, Govt. Medical College Chamba	04.10.2024
3.	596/16	Jalam Dei	E.E. HPPWD, Killar	04.10.2024
4.	878/16	Subhash Kumar	D.F.O. Pangi, Killar	04.10.2024
5.	45/22	Dhan Dev	D.F.O. Pangi, Killar	04.10.2024
6.	110/21	Harnam Singh	M/ S VMRT, Palampur & other	14.10.2024
7.	102/21	Karam Singh	Dir. Nanal Hydro Power & Other	21.10.2024
8.	101/21	Norang	- Do-	21.10.2024
9.	52/18	Vinod Kumar	Ram Murti Sharma	22.10.2024
10.	06/19	Jai Kishan	D.F.O. Chamba	22.10.2024
11.	04/19	Jarmo	D.F.O. Chamba	22.10.2024
12.	21/20	Kehar Singh	D.F.O. Churah, Chamba	22.10.2024
13.	31/22	Malkeet Singh	E.E. I & PH, Nurpur	23.10.2024
14.	79/15	Nanak Chand	D.F.O. Pangi, Killar	25.10.2024
15.	444/15	Basant Singh	D.F.O. Pangi, Killar	25.10.2024

By order,

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

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

Reference No. : 71/2017
Date of Institution : 23.2.2017
Date of Decision : 04.10.2024

Shri Tulsi Ram s/o Shri Sham Dass, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, IPH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

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

For the Petitioner : Nemo
For Respondent : Sh. Ajay Thakur, Ld. Dy. D.A.

AWARD

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

> "Whether alleged termination of services of Sh. Tulsi Ram s/o Sh. Sham Dass Village Shoon P.O. Udeen Tehsil Pangi Distt. Chamba, H.P. *w.e.f.* 27/8/2012, by the Executive Engineer, HPPWD Division, Pangi at Killar Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis during the years 1996 to 2003 only for 638 days and has raised his industrial dispute vide demand notice dated 27/8/2012 after more than 11 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The petitioner in the present case failed to appear before this court on 26.9.2024 at Chamba. The report shows that the petitioner has refused to accept summon of the court. Prior to 26.9.2024 the petitioner was served in person on more than one occasion. Despite due service and knowledge of the proceedings he did not put his presence nor any Counsel/Authorized Representative appeared on his behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

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

3. It is argued by learned Dy. D.A. for the respondent that the onus of proving the averments and allegations by way of filing of claim petition as well as by leading oral or documentary evidence in the court. The learned Dy. D.A. has further submitted that considering the conduct of the petitioner and the fact that he is not able to substantiate the allegations by way of filing of claim petition and evidence the reference cannot be decided without filing of claim petition as well as not leading evidence.

4. The perusal of the case file shows that the petitioner has refused to receive the summons of the court as well ample opportunities has been granted to the petitioner to appear before this court to file statement of claim and produce evidence oral as well as documentary. He not only failed to file claim petition and produce the evidence but despite having knowledge of the proceedings failed to produce evidence and appear before this court hence he was proceeded ex parte. The onus of proving the fact that termination of the services of the petitioner by the respondents *w.e.f.* 27.8.2012 was illegal and unjustified was on the petitioner. In absence of any pleadings and evidence to this fact the reference cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

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

5. Hon'ble Supreme Court in **M/s Haryana Suraj Malting Ltd.** *vs.* **Phool Chand, AIR 2018 SC 2670** has observed thus under the statutory scheme the Labour Court/Tribunal is

empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the Industrial Dispute and for maintaining industrial peace. If a party fails to attend the Court/Tribunal without showing sufficient cause, the Court/Tribunal can proceed ex parte and pass an ex parte award. The award, ex parte or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

6. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to file statement of claim and adduce evidence to substantiate allegations.

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

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

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

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

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

Reference No. : 23/2020
Date of Institution : 02.3.2020
Date of Decision : 04.10.2024

Smt. Nirmla Devi w/o Shri Ravinder Kumar, r/o Village Kundol, P.O. Diyola, Tehsil Churah, District Chamba, H.P. ...*Petitioner.*

Versus

1. The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. (Principal Employer)
2.
3. The Director, M/s IL & FS Human Resources Limited, 26, Bhasula House Om Vihar, 3A, New Delhi-110059.
4. The Director, M/s IL & FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. (Contractors)

...*Respondents.*

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

For the Petitioner : Nemo
For Respondent No. 1 : Sh. Akshay Jaryal, Ld. Adv.
For Respondent(s) No. 2 & 3 : Ms. Himakshi Gautam, Ld. Adv.

AWARD

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

> "Whether the termination of services of Smt. Nirmla Devi w/o Shri Ravinder Kumar, r/o Village Kundol, P.O. Diyola, Tehsil Churah, District Chamba, H.P. by (i) the Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. (Principal Employer) (ii) the Director, M/S IL&FS Human Resources Limited, 26, Bhasula House Om Vihar, 3A, New Delhi-110059 (iii) the Director I L& FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P. (Contractors), *w.e.f.* 01.-06-2019, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employer?"

2. The petitioner in the present case failed to appear before this court on 26.9.2024 at Chamba. The report shows that the petitioner has refused to receive summon of the court. Prior to 26.9.2024 the petitioner was served in person on more than one occasion. Despite due service and knowledge of the proceedings she did not put her presence nor any Counsel/Authorized Representative appeared on her behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

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

3. It is argued by learned counsel for the respondents that the onus of proving the averments and allegations by way of filing of claim petition as well as by leading oral or documentary evidence in the court is on the claimant. The learned counsel has further submitted that considering the conduct of the petitioner and the fact that she is not able to substantiate the allegations by way of filing of claim petition and evidence the reference cannot be decided in favour of the claimant.

4. The perusal of the case file shows that the petitioner has refused to receive the summons of the court as ample opportunities has been granted to the petitioner to appear before this court to file statement of claim and produce evidence oral as well as documentary. She not only failed to file claim petition and produce the evidence but despite having knowledge of the proceedings failed to appear before this court hence she was proceeded ex parte. The onus of proving the fact that termination of the services of the petitioner by the respondents w.e.f. 01.6.2019 was illegal and unjustified was on the petitioner. In absence of any pleadings and evidence to this fact the reference cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

> "22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board,

Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

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

6. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to file statement of claim and adduce evidence to substantiate allegations.

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

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

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

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

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

Reference No. : 596/2016
Date of Institution : 27.8.2016
Date of Decision : 04.10.2024

Smt. Jalam Dei w/o Shri Rattan Lal, r/o Village Phindpar, P.O. Mindal, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

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

For the Petitioner : None for the petitioner

For Respondent : Sh. Ajay Thakur, Ld. Dy. D.A.

AWARD

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

> "Whether alleged termination of services of Smt. Jalam Dei w/o Sh. Rattan Lal Village Phindpar P.O. Mindal Tehsil Pangi Distt. Chamba H.P. during September, 2004 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 275 days during the years August, 2002 to September, 2004 and has raised her industrial dispute vide demand notice dated 5/6/2015 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the years mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the services of petitioner were appointed by the respondent on daily wage basis in the year 1995 in IPH Sub-Division Killar on muster without any appointment letter and she had worked with the respondent utpo September, 2004 as Executive Engineer HPPWD Killar had also holding DDO power of IPH Sub Division Killar because there was no Division of IPH at Killar. It was asserted that the services of petitioner were unlawfully terminated time and again by the respondent by way of giving fictional breaks to not letting to complete 160 days despite the breaks the petitioner had completed more than 160 days. It was asserted that the services of the petitioner were unlawfully terminated by the respondent in the year 2004 and as such the respondent department had not followed the provisions of Section 25-F of the Industrial Disputes Act before terminating the services of the petitioner as no notice was served upon the petitioner. Neither the enquiry was conducted nor one month's pay in lieu of notice period and retrenchment compensation was paid to her. While terminating the services of the petitioner the department had not followed the principle of 'last come first go'. It was asserted that the act of the respondent while terminating the services of the petitioner in the year 2004 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947. Therefore, it is prayed that the oral termination dated October, 2008 may be set aside and the respondent be directed to reinstate the service of petitioner with full back wages and seniority, continuity in service from the date of her illegal termination along with cost of litigation.

3. The respondent by way of reply raised preliminary objections qua maintainability and petition being bad on the account of delay and laches. On merits, it was asserted that the it was denied that petitioner worked for 160 days in any calendar year. It was submitted that the petitioner was engaged as daily wages beldar in 2003 who worked intermittently with the department and left the job at her own sweet will and she came at work with her own convenience. It was further asserted that the no fictional were ever given to the petitioner by the respondent. It was further asserted that neither the fictional breaks were given to the petitioner nor her services were retrenched by the respondent. It was further submitted that neither junior persons were retained nor engaged by the respondent. It was asserted that the persons mentioned in para no.5 were re-engaged in accordance with the directions of this court. It was asserted that the petitioner had left the work in the year 2003 at her own sweet will. It was asserted that petitioner was an agriculturist and gainfully employed and she is not entitled for any back wages. In the light of these averments it is prayed that petition is to be dismissed.

4. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 15th July, 2019:—

1. Whether termination of the services of the petitioner by th respondent during September, 2004 is/was illegal and unjustified, as alleged? ...OPP

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

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

4. Whether the claim petition is bad on account of delay and latches, as alleged? ...OPR

Relief.

5. I have heard the learned Dy. D.A. for the respondent at length and records perused.

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

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Unpressed
Relief.	: Reference/Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

7. Both these issue shall be taken up together for the purpose of adjudication.

8. The petitioner in the present case failed to appear before this court on 26.9.2024 at Chamba despite being duly served. Perusal of the case file reveals that from the date issues were framed *i.e.* 15th July, 2019, no petitioner witnesses were produced by the petitioner. Many opportunities for petitioner evidence were granted thereafter notice was issued to the petitioner as learned counsel pleaded no instructions. Prior to 26.9.2024 the petitioner was served in person on more than one occasion. Despite due service and knowledge of the proceedings she did not put her presence nor any Counsel/Authorized Representative appeared on her behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

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

9. It is argued by learned Dy. D.A. for the respondent that the onus of proving the averments and allegations made in the claim petition presented on behalf of petitioner subject to the reference was on the petitioner. The petitioner failed to substantiate the averments made in the petition by leading oral or documentary evidence in the court. The learned Dy. D.A. has further submitted that considering the conduct of the petitioner and the fact that she is not able to

substantiate the allegations by way of evidence the reference cannot be decided in accordance with prayer made in her claim petition.

10. The perusal of the case file shows that ample opportunities has been granted to the petitioner to appear before this court and produce evidence oral as well as documentary. She not only failed to produce the evidence but despite having knowledge of the proceedings failed to produce evidence and appear before this court hence she was proceeded ex parte. The onus of proving the fact that termination of the services of the petitioner by the respondent in September, 2004 was illegal and unjustified was on the petitioner. In absence of any evidence to this fact the issues No. 1 and 2 cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

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

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

12. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to substantiate allegations by way of evidence accordingly issues No. 1 and 2 cannot be decided in the favour of petitioner.

Issue No. 3

13. The onus to prove this issue on the respondent. No evidence has been led on behalf of the respondent however considering the fact that the petitioner has failed to prove the averments made in the petition by way of evidence, the present claim petition is not maintainable.

Issue No. 4

14. Onus of proving this issue of the respondent no evidence has been led, neither any arguments have been forwarded in order to prove the above issue. Hence, this issue No. 4 shall remain un-pressed.

RELIEF

15. In view of my findings on the issues no. 1 to 3 above, the claim petition is not maintainable and is accordingly dismissed. The parties are left to bear their costs.

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

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

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

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

Reference No. : 878/2016
Date of Institution : 07.12.2016
Date of Decision : 04.10.2024

Shri Subhash Kumar s/o Shri Atti Ram, r/o Village Chow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. through Shri N.L.Kaundal, (Legal Advisor, BMS) H/Q Balakrupi, P.O. Jalpehar,Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
...Respondent.

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

For the Petitioner : None for the petitioner
For Respondent : Sh. Ajay Thakur, Ld. Dy. D.A.

AWARD

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

> "Whether alleged termination of the services of Shri Subhash Kumar s/o Shri Atti Ram, r/o Village Chow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. through Shri N.L. Kaundal, (Legal Advisor, BMS) H/Q Balakrupi, P.O. Jalpehar,Tehsil Joginder Nagar, District Mandi, H.P. during October, 2004 by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 02-07-2015 after delay of more than 11 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of October, 2004 for 31 days and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the services of petitioner were engaged as forest worker on daily wage basis on muster roll in the year 1996 in Purthi Range Office, Killar. No appointment letter was given to him at the time of his engagement on muster roll as well as no casual card/attendance card provided to him from 1996 uptil 2004. Thereafter, the

services of the petitioner were engaged on bill voucher *w.e.f.* 2005 and he continued worked upto the year 2007. It was asserted that the services of the petitioner were engaged and disengaged by way of giving him fictional breaks from his initial date of appointment by the respondent just to not letting complete 160 days in each and every calendar year for the purpose of Section 25-B of the Industrial Disputes Act, 1947 and such practice were continued upto 2007 and finally his services were terminated by the department in the year 2007. It was submitted that the persons who were working with the petitioner had been engaged continuously without any breaks. Junior to petitioner had been engaged continuously without any breaks. New persons had also been engaged by the department without giving them any fictional breaks. It was asserted that while terminating the services of the petitioner department had not followed the provisions of the Industrial Disputes Act, 1947. Neither any notice was issued to the petitioner nor any enquiry was conducted against him nor the retrenchment compensation was paid to the petitioner. It was asserted that the petitioner had completed more than 160 days in few years as the criteria fixed by the State Government for continuous service under Section 25-B of the Industrial Disputes Act. Therefore, it is prayed that the oral termination dated October, 2008 may be set aside and the respondent be directed to reinstate the service of petitioner with full back wages and seniority, continuity in service from the date of his illegal termination along with cost of litigation.

3. The respondent by way of reply raised preliminary objections qua maintainability and petition being bad on the ground of delay and laches. On merits, it was asserted that the forest department executed mainly forestry works *i.e.* raising of nurseries, plantations and other soil and water conservation which are seasonal, however these activities were not carried out in the whole year. It was asserted that the petitioner was never engaged as a forest worker as claimed by him, but he was engaged as casual labourer till the completion of the work. It was asserted that the petitioner had worked only for 31 days during October, 2004 and he left the work at his own sweet will and he never turned up for work. The services of the petitioner were never disengaged or terminated. It was denied that the petitioner was given fictional breaks by not letting him complete 160 days in a year. It was stated that the petitioner had not completed 160 days of work in any calendar year and not fulfilled the condition of Section 25-B of the Industrial Disputes Act, 1947. It was submitted that neither the junior were retained nor engaged by the respondent department and as such there was no violation of Sections 25-G and 25-H of the Industrial Disputes Act, however persons mentioned in para 3 of the claim petition are senior to the petitioner and the respondent had followed the principle of 'last come first go'. In the light of these averments it is prayed that petition is to be dismissed.

4. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 11th May, 2022:

1. Whether the termination of services of the petitioner during October, 2004 by the respondent is violation of the provisions contained under Section 25-F of the Act, as alleged? ...OPP

2. Whether the respondent has violated the provisions contained under Section 25-G and 25-H of the Act, as alleged? ...OPP

3. If issues no. 1&2 are proved in affirmative, to what relief, the petitioner is entitled to? ...OPP

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

5. Whether the claim petition is bad on account of delay and latches, as alleged? ...OPR

Relief.

5. I have heard the learned Dy. D.A. for the respondent at length and records perused.

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

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: Yes
Issue No. 5	: Unpressed
Relief.	: Reference/Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

7. All these issue shall be taken up together for the purpose of adjudication.

8. The petitioner in the present case failed to appear before this court on 26.9.2024 at Chamba despite being duly served. Perusal of the case file reveals that from the date issues were framed *i.e.* 11th May, 2022, no petitioner witnesses were produced by the petitioner. Many opportunities for petitioner evidence were granted thereafter notice was issued to the petitioner as learned counsel pleaded no instructions. Prior to 26.9.2024 the petitioner was served in person. Despite due service and knowledge of the proceedings he did not put his presence nor any Counsel/Authorized Representative appeared on his behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

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

9. It is argued by learned Dy. D.A. for the respondent that the onus of proving the averments and allegations made in the claim petition presented on behalf of petitioner subject to the reference was on the petitioner. The petitioner failed to substantiate the averments made in the petition by leading oral or documentary evidence in the court. The learned Dy. D.A. has further submitted that considering the conduct of the petitioner and the fact that he is not able to substantiate the allegations by way of evidence the reference cannot be decided in accordance with prayer made in her claim petition.

10. The perusal of the case file shows that ample opportunities has been granted to the petitioner to appear before this court and produce evidence oral as well as documentary. He not only failed to produce the evidence but despite having knowledge of the proceedings failed to produce evidence and appear before this court hence he was proceeded ex parte. The onus of proving the fact that termination of the services of the petitioner by the respondent in October, 2004 was illegal and unjustified was on the petitioner. In absence of any evidence to this fact the issues No.1 to 3 cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

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

represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

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

12. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to substantiate allegations by way of evidence accordingly issues No. 1 to 3 cannot be decided in the favour of petitioner.

Issue No. 4

13. The onus to prove this issue on the respondent. No evidence has been led on behalf of the respondent however considering the fact that the petitioner has failed to prove the averments made in the petition by way of evidence, the present claim petition is not maintainable.

Issue No. 5

14. Onus of proving this issue of the respondent no evidence has been led, neither any arguments have been forwarded in order to prove the above issue. Hence, this issue No. 5 shall remain un-pressed.

Relief

15. In view of my findings on the issues no. 1 to 3 above, the claim petition is not maintainable and is accordingly dismissed. The parties are left to bear their costs.

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

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

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

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

Reference No. : 45/2022
Date of Institution : 05.3.2022
Date of Decision : 04.10.2024

Shri Dhan Dev s/o Shri Negi Ram, r/o Village Korei, P.O. Rei, Tehsil Pangi, District Chamba, H.P. through the General Secretary, District Committee, All ndia Trade Union Congress (AITUC), HO: CHEP, Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P.

...Petitioner.

Versus

The Divisional Forest Officer, Forest Division Pangi at Killar, District Chamba, H.P.

...Respondent.

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

For the Petitioner : None for the petitioner
For Respondent : Sh. Ajay Thakur, Ld. Dy. D.A.

AWARD

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

> "Whether the action of the employer *i.e.* the Divisional Forest Officer, Forest Division Pangi at Killar, District Chamba, H.P. not to regularize the services of Shri Dhan Dev s/o Shri Negi Ram r/o Village Korei, P.O. Rei, Tehsil Pangi, District Chamba, H.P. through the General Secretary, District Committee, All ndia Trade Union Congress (AITUC), HO: CHEP, Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P. w.e.f. 01-01-2016 (as alleged by workman) on completion of continuous service of 8 years, as defined in Section-25(B) of the Industrial Disputes Act, 1947 i.e. 160 working days in every year, as per policy of the Himachal Pradesh Government, is legal and justified? If not, what benefits regarding regularization, back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner/workman belongs to Tehsil Pangi of District Chamba as the Pangi area of District Chamba is remote part of the District and it declared as schedule tribe area. The State of Himachal Pradesh had framed policy for regularization of daily wages workers and as per requirement of 160 days of work in each calendar year for tribal area. It was also asserted that Himachal Pradesh is also provided single line administration to manage the administration of area and respondent is holding the post of Divisional Forest Officer at Division Pangi. It was asserted that the petitioner was initially engaged as daily wage worker on muster roll basis since the year 2005 in Forest Range Purthi Forest Division Pangi at Killar and worked continuously with the respondent department. In between the services of the petitioner were engaged and disengaged as well as fictional breaks were given to the petitioner not to complete 160 days in each calendar year for regularization purpose whereas the services of junior persons who were junior to the petitioner were retained continuously by the department. It was also asserted that condition of service were changed by the respondent from daily wages basis without serving any mandatory notice upon the petitioner under Section 9A of the Industrial Disputes Act. It was further asserted that respondent was not only violated the specific provisions of the Industrial Disputes Act but had also ignored Notification No. FFE-B-C(1)-35/2009 Shimla-2 which was issued by the Government of Himachal Pradesh with regard to engagement of workers on muster roll basis even after the introducing of bill basis system. It was also asserted that bill basis system was introduced in all Divisions of District Chamba in the year 2014. Not only changed the condition of service of petitioner but also given him fictional breaks so that he (petitioner) could not complete 160 days of continuous service in each calendar year. It was

further asserted that the respondent department had not disclosed actual numbers of days before Conciliation Officer and fictional breaks were given to him which was an unfair labour practice within the meaning of Industrial Disputes Act just to deprive of the petitioner not to complete 160 days in each year. It is well settled established law that the period of cessation of work was not due to any fault on the part of the employee. The respondent department had not regularized the services of petitioner due to give him fictional breaks for the purpose of seniority and continuity which was obligatory on the part of respondent and as such fictional breaks period is to be counted for the purpose of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947. It was asserted that sufficient work was available with the respondent department and while giving fictional breaks to the petitioner favoured the junior who were favourite to the respondent and they were retained continuously without any breaks. The principle of 'last come first go' was not followed by the respondent department. Since the petitioner was working on muster roll daily wage basis from the year 2005 whereas the workers joined the department along with petitioner were retained continuously and now their services had been regularized as the respondent department had committed grave violation of Section 25-G of the Industrial Disputes Act, 1947. It was asserted that petitioner has spotless service with the respondent department and he had never charge-sheeted for any act of indiscipline, negligence of work or misconduct and the petitioner performed his duties with full devotion. The petitioner is very poor and he has no other source of income and he approached the respondent department time and again to give fictional breaks in between the service of the petitioner and also regularized the services of the petitioner under the 8 years of regularization policy of the State Government, but respondent department was not pay any heed to the request of the petitioner. The petitioner is remained unemployed during the break period and nowhere gainfully employed and however he is entitled to the relief of continuity of service from the date of his initial engagement and benefits regarding regularization, back wages, seniority, past service benefits and compensation from the respondent department. It was asserted that the respondent had committed gross violation of the statutory provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, notification of the State Govt. of H.P. and infringed fundamental rights as enshrined under Articles 14, 16 and 21 of the Constitution of India. The act on the part of respondent was malafide, arbitrary, unconstitutional, illegal and highly unjustified and against the principle of natural justice and as such also amounts to unfair labour practice. Therefore, it is prayed that period of intermittent/fictional breaks given to petitioner during entire service period from year 2000 onwards time and again may be set aside and counted towards calculation of continuous service of 160 days in each calendar year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. It is also prayed that the services of petitioner is to be regularized *w.e.f.* 1.1.2016 under 8 years of regularization policy of HP Government along with all consequential benefits regarding regularization, back wages, seniority, past service benefits and compensation etc.

3. The respondent by way of reply raised preliminary objections qua maintainability, petitioner not come to court with clean hands and suppression of material fact, petition is being bad due to period of limitation, delay and laches and estopple. On merits, it is asserted that the petitioner was not engaged in Purthi Range of Pangi Forest Division *w.e.f.* April, 2005 on muster roll basis. It is submitted that petitioner had worked with replying respondent department on bidding lowest quotation and payments were made to him accordingly as per works done by the petitioner. It is further submitted that petitioner had worked with replying respondent department on offered lowest quotation and accordingly payments were made to him as per works done by him. It was denied that the respondent violated the provisions of any law and ignored dictate of notification No. FFE-B-C91-35/2009 issued by Govt. of H.P. It was further denied that bill basis system was introduced in the year 2014 in all Divisions of District Chamba. It was also denied that the petitioner was entitled to be issued muster roll as being a daily wager but it was submitted that the petitioner worked after offering lowest quotation and payments were made accordingly. It was denied that the fictional breaks were ever given to the petitioner for reason that he could not

complete 160 days of continuous service in each calendar year. It was denied that fictional breaks were given to petitioner intentionally to deprive him of his right and due to this act of respondent his service could not be regularized. It was denied that the petitioner was entitled to the benefits of continuous service as per the Industrial Disputes Act. The petitioner has never worked with the respondent department since April, 2005 on muster roll basis, hence no violation of principle of 'last come first go' was done in the instant case. It is further submitted that the services of daily wagers had been regularized by the respondent department after having fulfilled the criteria of continuity service, however services of petitioner cannot be considered for regularization due to the reason that he had not completed 5 years of continuous service within minimum 160 days of work in a calendar year and as such he was working on bill basis. It was denied that sufficient work was available with the respondent. It is submitted that the work is got done by the respondent department on the basis of new requirement and for this time allocation of funds was received from the government. It was denied that the persons junior had been engaged by the respondent without following the principle of 'last come first go'. It is asserted that no provision of the Industrial Disputes Act was violated. Other allegations made in the petitioner were denied and it is prayed that petition may be dismissed.

4. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 29th November, 2022:—

1. Whether the action of the respondent to not regularizing the services of the petitioner *w.e.f.* 1.1.2006 is/was illegal and unjustified as alleged? ...OPP

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

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

4. Whether the claim petition is bad on account of delay and laches as alleged? ...OPR

5. Whether the petitioner is stopped to file the present case by his act and conduct and acquiescence as alleged? ...OPR

Relief.

5. I have heard the learned Dy. D.A. for the respondent at length and records perused.

6. 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
Issue No. 3	: Unpressed
Issue No. 4	: Unpressed
Issue No. 5	: Unpressed
Relief.	: Reference/Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

7. The petitioner in the present case failed to appear before this court on 26.9.2024 at Chamba despite being duly served. Perusal of the case file reveals that from the date issues were framed *i.e.* 29th November, 2022, no petitioner witnesses were produced by the petitioner. Many opportunities for petitioner evidence were granted thereafter notice was issued to the petitioner as learned counsel pleaded no instructions. Prior to 26.9.2024 the petitioner was served in person on more than one occasion. Despite due service and knowledge of the proceedings he did not put his presence nor any Counsel/Authorized Representative appeared on his behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

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

8. It is argued by learned Dy. D.A. for the respondent that the onus of proving the averments and allegations made in the claim petition presented on behalf of petitioner subject to the reference was on the petitioner. The petitioner failed to substantiate the averments made in the petition by leading oral or documentary evidence in the court. The learned Dy. D.A. has further submitted that considering the conduct of the petitioner and the fact that he is not able to substantiate the allegations by way of evidence the reference cannot be decided in accordance with prayer made in his claim petition.

9. The perusal of the case file shows that ample opportunities has been granted to the petitioner to appear before this court and produce evidence oral as well as documentary. He not only failed to produce the evidence but despite having knowledge of the proceedings failed to produce evidence and appear before this court hence he was proceeded ex parte. The onus of proving the fact that regularization of the services of the petitioner by the respondent *w.e.f.* 1.1.2006 was illegal and unjustified was on the petitioner. In absence of any evidence to this fact the issue No. 1 cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

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

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

11. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to substantiate allegations by way of evidence accordingly issue No.1 cannot be decided in the favour of petitioner.

Issue No. 2

12. The onus to prove this issue on the respondent. No evidence has been led on behalf of the respondent however considering the fact that the petitioner has failed to prove the averments made in the petition by way of evidence, the present claim petition is not maintainable.

Issues No. 3 to 5

13. Onus of proving these issues of the respondent no evidence has been led, neither any arguments have been forwarded in order to prove the above issues. Hence, these issues No. 3 to 5 shall remain un-pressed.

Relief

14. In view of my findings on the issues no. 1 and 2 above, the claim petition is not maintainable and is accordingly dismissed. The parties are left to bear their costs.

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

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

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

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

Reference No. :110/2021
Date of Institution : 18.8.2021
Date of Decision : 14.10.2024

Shri Harnam Singh Thakur s/o Shri Kanwar Singh, r/o Village Bhoor, P.O. Jhangi, Tehsil Sandhole, District Mandi, H.P. *..Petitioner.*

Versus

1. The HOD/Incharge, Administration/HRD, M/s Vivekanand Medical Institute, Palamupr, District Kangra, H.P.
2. Sh. R. P. Singh (Government Contractor) M/s Aruna Housing Keeping service (Regd.) Head Office A-76 Chabder Vihar, I.P. Extension, Patpargang, New Delhi-110092.

..Respondents.

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

For the Petitioner : Ms. Ankita, Ld. Adv.

For Respondent No.1 : Sh. Kunal Baloria, Ld. Vice Adv.
For Respondent No.2 : Sh. Apoorav Bharti, Ld. Vice Adv.

AWARD

This is a claim petition under Section 2-A of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of filing of dispute before the Conciliation Officer.

2. Heard. Petitioner Shri Harnam Singh has made statement that he does not want to proceed with the direct claim/claim petition i.e. Reference No.110/2022. His separate statement to this effect is recorded as well as identified by his learned counsel and placed on the file.

3. In view of the above, this direct claim/claim petition no. 110/2022 is dismissed as withdrawn.

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

Announced in the open Court today, this 14th day of October, 2024.

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

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

Reference No. : 102/2021
Date of Institution : 16.9.2021
Date of Decision : 21.10.2024

Shri Karam Singh s/o Shri Rattan Chand, r/o Village Samot, P.O. Tarella, Tehsil Churah, District Chamba, H.P. ...*Petitioner.*

Versus

1. The Director, Nanal Hydro Power Consultancy Private Limited, Vardaan Building, Below Gita Mandi, Tuti Kandi, Shimla, H.P.
2. The Site Incharge, Nanal Hydro Power Consultancy Private Limite, Village Nera, P.O. Ganed, Tehsil Churah, District Chamba, H.P. ..*Respondents.*

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For Respondent(s) : Sh. Nitin Gupta, Ld. Adv.

AWARD

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

> "Whether the termination of services of Shri Karam Singh s/o Shri Rattan Chand, r/o Village Samot, P.O. Tarella, Tehsil Churah, District Chamba, H.P. *w.e.f.* 07.04.2020 *vide* letter dated 12-05-2020 by (i) the Director, Nanal Hydro Power Consultancy Private Limited, Vardaan Building, Below Gita Mandir, Tuti Kandi, Shimla, H.P. (ii) the Site Incharge, Nanal Hydro Power Consultancy Private Limited, Village Nera, P.O. Ganed, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged by company/establishment on daily wage basis on 16.3.2018 as Junior Electrical Engineer without any appointment letter. The petitioner was receiving a salary of Rs.10,000/- per month from the respondent company. It is alleged that on 7.5.2020 the services of petitioner were orally terminated by company/establishment. The petitioner was unable to join his duty due to spread of corona virus and lockdown from 7.5.2020. On 6.5.2020 the petitioner had joined the duty but on 7.5.2020 the respondent/company informed that the services of petitioner have already been terminated on 7.5.2020. It is alleged that the services of petitioner were terminated despite notification issued by Government of India and State Government regarding lockdown with the directions not to terminate the services of workmen of any establishment or company who are unable to join their duty due to corona virus and lockdown. It is further submitted that after lockdown *w.e.f.* 24.3.2020 the petitioner was performing his duties against the curfew pass issued by SDM Tissa in between one persons of village Nera, Gram Panchayat Tissa-II was found corona positive on 6.4.2020 then entire village of Gram Panchayat Tissa-II was sealed and curfew passes issued by SDM Tissa were cancelled. Due to this petitioner was not able to reach place of posting to perform his duty. After normalization of situation and lifting restrictions the petitioner reported on his duty on 6.5.2020/7.5.2020 but he was not allowed to join his duty and told that his services had been terminated. According to petitioner absence of petitioner from his duty from 7.5.2020 was neither intentional nor wilful but due to above mentioned reason which was bonafide and beyond the control of petitioner. Petitioner has submitted that he has no source of income and he is very poor person. He has requested the respondent time and again to re-engage him but respondents did not pay heed to his request. The services of petitioner were terminated without issuing any notice indicating the reason for retrenchment. Neither any inquiry was conducted nor retrenchment compensation was paid to petitioner for this illegal termination. The petitioner has alleged non compliance of provisions of Section 25-F of the Industrial Disputes Act. He further alleges that at the time of unlawful termination persons engaged with the petitioner and persons junior to the petitioner were retained continuously without any breaks. Thus respondents are alleged to have violated the principle of 'last come first go' as embodied in Section 25-G of the Industrial Disputes Act. The petitioner also referred the name of persons who were engaged by the respondents establishment being junior to the petitioner as Pawan Kumar, Virender, Pawan s/o Umeda, Rajinder Singh, Vikesh Kumar, Kasam Deen, Bashir, Ravinder, Deen Mohd. and Rakesh. According to petitioner the State of Himachal Pradesh had framed policy for regularization for daily wage worker which required for 240 days of work in each calendar year. The respondents however did not disclose the actual number of days before the Conciliation Officer and retrenched the petitioner without any retrenchment compensation. He was not given an opportunity for re-employment, neither any preference with respect to the other persons who were junior to him. In the light of above averments it is submitted that the illegal termination of the petitioner was in violation of the

provisions of the Industrial Disputes Act. It is prayed that the petitioner may be reinstated in the service with the respondent w.e.f. 7.5.2020 along-with back wages and all other consequential benefits.

3. Respondents in their reply raised preliminary objections qua maintainability, suppression of material facts and lack of cause of action. On merits, it is asserted that petitioner was engaged as a trainee engineer *w.e.f.* 16.3.2018 on daily wages. It is further submitted that the petitioner was allowed to stay at company's camp i.e. Sharma Niwas Village Patogan where lodging and food were being provided free. The Panchayat Tissa where this village was sealed by local administration, the SDM Churah allowed the company termporarily shifted their camp from Sharma Niwas to Project Power House in order to run the essential services of power generation. The petitioner along-with other staff was shifted from camp and was also offered vehicle No. HP-44-2803 to reach power house but the petitioner did not obey the order and absented himself from the duty *w.e.f.* 7.4.2020 on 12.5.2020. It is alleged that absence of the petitioner was intentional and wilful. The petitioner refused to shift to temporary camp during sealed period while others engineers shifted to camp and continued run the power house. Thus petitioner was legally terminated *w.e.f.* 7.4.2020 on 12.5.2020. It is denied that termination was in violation of notification issued by Government of India and State Government. It is further Submitted that there was no violation of Sections 25-G, 25-H and 25-F of the Industrial Disputes Act. The petitioner had approached the respondent who was duly apprised of the reasons of his termination. On the request of petitioner he was re-employed on outsource basis *w.e.f.* 2.8.2021. However his behaviour was again found to be negligent and irresponsible. He was found having consumed liquor on shift duty on 7.9.2021. Notice and warning was also issued to him to not to repeat such behaviour in future. Other averments made in the petition are denied para-wise and it is prayed that the petition deserve to be dismissed.

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

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

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 7.4.2020 is/was illegal and unjustified as alleged? ...OPP

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

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

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

5. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR

Relief.

6. The petitioner in order to prove his case made statement by way of affidavit Ext. P1. He also produced copy of certificate Ext. P2, copy of letter dated 7.4.2020 Ext. P3, copy of letter dated 31.3.2020 Ext. P4, copy of letter dated 26.3.2020 Ext. P5, copy of letter dated 24.3.2020 Ext. P6, copy of list of workers Ext. P7 and copy of list of workers dated 26.3.2020 Ext. P7 in evidence.

7. Respondents have examined Shri Dhian Singh Verma, Director, M/s Nanal Hydro Project by way of affidavit Ext. RW1/A by way of affidavit Ext. R1. He produced in evidence vehicle permit Ext. R-2, letter dated 31.3.2020 Ext. R-3, statement of account Ext. R-4, bill/receipt for the month of October, 2021 Ext. R-5, Bill/receipt for the month of December, 2021 Ext. R-6, receipt for the month of November, 2021 Ext. R-7, receipt for September Ext. R-8, account statement Ext. R-9 and joining letter Ext. R-10.

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

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

Issue No.1	: Yes
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

10. It is the contention of the petitioner as stated on oath is that he was employed as Junior Electrical Engineer by the respondent company/establishment on daily wage basis on 16.3.2018. He also submitted that he had continuously worked with the respondent till the month of April, 2020. Respondents have not denied that they have engaged the petitioner as an Engineer however it is asserted that he was trainee engineer *w.e.f.* 16.3.2018 till the date of his termination from 7.4.2020. It is pertinent to mention here that even if the petitioner is considered to be trainee engineer receiving salary being engaged by the respondent he falls within the definition of workman under Section 2 Clause (s) of the Industrial Disputes Act, 1947. The period of continuous service of the petitioner from 16.3.2018 till the date of his termination in the month of April, 2020 is not a disputed fact. Respondents have not produced the mandays chart of the petitioner in this regard and since they have withheld the record pertaining to continuous service of the petitioner and not denied it expressly it can be inferred that petitioner had worked continuously *i.e.* 240 days of work in each year of his employment and also 12 months preceding his termination.

11. The petitioner has submitted that after lockdown *w.e.f.* 24.3.2020 a person in Gram Panchayat Tissa-II was found corona positive on 16.4.2020 and entire village of Gram Panchayat Tissa-II was sealed and curfew passes was issued by SMD Tissa were cancelled, due to this reason the petitioner was not able to reach the place of posting to perform his duty. He could only report for duty after normalization of situation and lifting of the restriction. When he reported for duty on 6.5.2020 he was not allowed to join his duty but he was told that his services have been terminated. He has asserted that his absence from duty from 7.4.2020 to 6.5.2020 was not intentional and wilful but due to reasons mentioned above. Contrary to this it is the stand of respondent that the respondent company had requested the local administration to continue with the services of the respondent company falling under essential service and accordingly the permission had been granted for taking their staff members from their camp i.e. Sharma Niwas to Power House and vehicle No. HP-44-2803 also given permission for this purpose. Despite this the petitioner did not obey the order and absented from duties. Consequent to this the services of the petitioner were terminated vide order Ext. R-1. A careful perusal of order Ext. R-1 shows that the petitioner was

alleged to have disobeyed the order and remaining absence from duty *w.e.f.* 7.4.2020. It was also mentioned in the letter that on 18.1.2020 the petitioner had been warned against habitual drinking during duty hours. Section 2 Clause (oo) defines retrenchment as follows:—

> "(oo)["retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include - *[Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).]* (a)voluntary retirement of the workman; or(b)retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or]"

12. The petitioner being a workman and respondent being a establishment within the provisions of the Industrial Disputes Act, 1947 were bound by the provisions of the Act and in case the termination of the petitioner was consequent to disciplinary action the procedure complying with the principle of natural justice ought to have been followed by the respondent company before dispensing with the services of the petitioner. In order to prove their case against the respondent the petitioner has merely produced on record the termination order Ext. R1. The record produced by the respondents further pertains to the vehicle permit and the permission which have been granted by local administration to continue the work by the respondent company and its workers during the corona period. It is however clear from the documents produced by the respondents that the respondent had not issued any show cause notice to the petitioner neither any charge-sheet or any inquiry proceedings were carried out in order to prove that the petitioner had wilfully absented himself from the duties and thus made himself liable for the disciplinary action which would culminate into termination. It is clear that without following any due process the respondent company had terminated the services of the petitioner. In these circumstances the termination of the services of the petitioner clearly falls within the definition of retrenchment as mentioned above. It is also clear that neither any one month's notice nor any amount has been paid in lieu of such notice period which is clear violation of Section 25-F of the Industrial Disputes Act, 1947. RW1 Shri Dhian Singh Verma admits that the workmen shown in para no.7 of the claim petition are still working with the company. He has not asserted that these workmen were not junior to the petitioner or had not been employed after appointment or termination of the petitioner thus there was clear violation of Section 25-G of the Industrial Disputes Act in the present case. The fact that respondent had subsequently provided employment to the petitioner does not absolve respondents from their responsibility or dispensing with the services of the petitioner by following the principle of natural justice as on 7.5.2020. The respondents have never given any notice of termination of the services of the petitioner nor made any payment of wages in lieu of the notice period. The act and conduct of the respondents while terminating the services of the petitioner was illegal and unjustified, accordingly issue no.1 is decided in the favour of the petitioner.

Issue No. 2

13. In the light of observations made and the facts which have been discussed while discussing issue no.1 above, it is evident that the services of petitioner were illegally terminated by the respondents on 7.4.2020 vide letter dated 12.5.2020 without complying with the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, thus the petitioner is held entitled for reinstatement of his service on daily wage basis from the date of his termination i.e. 7.4.2020 and all the consequential benefits of continuous service since the year 2018 without back wages. The petitioner is also held entitled to compensation of Rs. 1,00,000/- on account of illegal retrenchment is being carried out by the respondents. Issue No.2 is decided accordingly.

Issues No. 3 to 5

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

15. The onus of proving these issues on the respondents the maintainability of petition specifically challenged on the ground that petitioner was engaged as trainee Engineer in the year 2018 on daily wage basis, the evidence on case file proves that respondents had deliberately tried to conceal the number of days for which the petitioner had worked with the respondents company. It is however established that the petitioner was continuously working with the respondent since 2018. Nothing emerges from the evidence to establish that the petitioner had suppressed any material facts from this court as well as he has no cause of action to file the present claim. Accordingly issues No. 3, 4 and 5 are decided in the favour of the petitioner and against the respondents.

RELIEF

16. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement of his service on daily wage basis from the date of his termination i.e. 7.4.2020 and all the consequential benefits of continuous service since the year 2018 without back wages. The petitioner is also held entitled to compensation of Rs. 1,00,000/- on account of illegal retrenchment is being carried out by the respondents. Parties are left to bear their costs.

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

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

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

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

Reference No. : 101/2021
Date of Institution : 16.9.2021
Date of Decision : 21.10.2024

S hri Norang s/o Smt. Brahmi, r/o Village Makkan, P.O. Sanwal, Tehsil Churah, District Chamba, H.P. *...Petitioner.*

Versus

1. The Director, Nanal Hydro Power Consultancy Private Limited, Vardaan Building, Below Gita Mandi, Tuti Kandi, Shimla, H.P.

2. The Site Incharge, Nanal Hydro Power Consultancy Private Limite, Village Nera, P.O. Ganed, Tehsil Churah, District Chamba, H.P. ...*Respondents*.

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For Respondent(s) : Sh. Nitin Gupta, Ld. Adv.

AWARD

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

> "Whether the termination of services of Shri Norang s/o Smt. Brahmi, r/o Village Makkan, P.O. Sanwal, Tehsil Churah, District Chamba, H.P. *w.e.f.* 07.04.2020 vide letter dated 05-05-2020 by (i) the Director, Nanal Hydro Power Consultancy Private Limited, Vardaan Building, Below Gita Mandir, Tuti Kandi, Shimla, H.P. (ii) the Site Incharge, Nanal Hydro Power Consultancy Private Limited, Village Nera, P.O. Ganed, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged by company/establishment on daily wage basis on 16.8.2018 as Junior Electrical Engineer without any appointment letter. The petitioner was receiving a salary of Rs. 10,000/- per month from the respondent company. It is alleged that on 7.5.2020 the services of petitioner were orally terminated by company/establishment. The petitioner was unable to join his duty due to spread of corona virus and lockdown from 7.5.2020. On 6.5.2020 the petitioner had joined the duty but on 7.5.2020 the respondent/company informed that the services of petitioner have already been terminated on 7.5.2020. It is alleged that the services of petitioner were terminated despite notification issued by Government of India and State Government regarding lockdown with the directions not to terminate the services of workmen of any establishment or company who are unable to join their duty due to corona virus and lockdown. It is further submitted that after lockdown *w.e.f.* 24.3.2020 the petitioner was performing his duties against the curfew pass issued by SDM Tissa in between one persons of village Nera, Gram Panchayat Tissa-II was found corona positive on 6.4.2020 then entire village of Gram Panchayat Tissa-II was sealed and curfew passes issued by SDM Tissa were cancelled. Due to this petitioner was not able to reach place of posting to perform his duty. After normalization of situation and lifting restrictions the petitioner reported on his duty on 6.5.2020/7.5.2020 but he was not allowed to join his duty and told that his services had been terminated. According to petitioner absence of petitioner from his duty from 7.5.2020 was neither intentional nor wilful but due to above mentioned reason which was bonafide and beyond the control of petitioner. Petitioner has submitted that he has no source of income and he is very poor person. He has requested the respondent time and again to re-engage him but respondents did not pay heed to his request. The services of petitioner were terminated without issuing any notice indicating the reason for retrenchment. Neither any inquiry was conducted nor retrenchment compensation was paid to petitioner for this illegal termination. The petitioner has alleged non compliance of provisions of Section 25-F of the Industrial Disputes Act. He further alleges that at the time of unlawful termination persons engaged with the petitioner and persons junior to the petitioner were retained continuously without any breaks. Thus respondents are alleged to have violated the principle of 'last come first go' as embodied in Section 25-G of the Industrial Disputes Act. The petitioner also referred the name of persons who were engaged by the respondents establishment being junior to the petitioner as Pawan Kumar, Virender, Pawan s/o Umeda, Rajinder

Singh, Vikesh Kumar, Kasam Deen, Bashir, Ravinder, Deen Mohd. and Rakesh. According to petitioner the State of Himachal Pradesh had framed policy for regularization for daily wage worker which required for 240 days of work in each calendar year. The respondents however did not disclose the actual number of days before the Conciliation Officer and retrenched the petitioner without any retrenchment compensation. He was not given an opportunity for re-employment, neither any preference with respect to the other persons who were junior to him. In the light of above averments it is submitted that the illegal termination of the petitioner was in violation of the provisions of the Industrial Disputes Act. It is prayed that the petitioner may be reinstated in the service with the respondent *w.e.f.* 7.5.2020 alongwith back wages and all other consequential benefits.

3. Respondents in their reply raised preliminary objections qua maintainability, suppression of material facts and lack of cause of action. On merits, it is asserted that petitioner had not done his duty to the satisfaction of respondents and interview was conducted on 20.12.2019 wherein his performance was found dissatisfactory and the petitioner was advised and granted time to improve the same. On 9.2.2020 the performance of the petitioner was reviewed but again found unsatisfactory. It is further submitted that the petitioner was allowed to stay at company's camp *i.e.* Sharma Niwas Village Patogan where lodging and food were being provided free. The Panchayat Tissa to where this village was sealed by local administration, the SDM Churah allowed the company to temporarily shift their camp from Sharma Niwas to Project Power House in order to run the essential services of power generation. The petitioner along-with other staff was shifted from camp and was also offered vehicle No. HP-44-2803 to reach power house but the petitioner did not obey the order and absented himself from the duty *w.e.f.* 7.4.2020. It is alleged that absence of the petitioner was intentional and wilful. The petitioner refused to shift temporary camp during sealed period while others engineer shifted to camp and continued run the power house. Thus services of petitioner was legally terminated *w.e.f.* 7.4.2020. It is denied that termination was in violation of notification issued by Government of India and State Government. The petitioner had approached the respondent who was duly apprised of the reasons of his termination. The services of the petitioner were not terminated abruptly but due his pas dissatisfactory behaviour as well as non joining of services at relevant time. It is further submitted that there was no violation of Sections 25-G, 25-H and 25-F of the Industrial Disputes Act. Other averments made in the petition are denied para-wise and it is prayed that the petition deserve to be dismissed.

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

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

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 5.5.2020 is/was illegal and unjustified as alleged? ...OPP

2. If issue no.1 is proved in affirmative, 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 come to the court with clean hands and concealed the true and material facts as alleged? ...OPR

5. Whether the petitioner has no cause of action to file the present case, as alleged? ...OPR

Relief.

6. The petitioner in order to prove his case made statement by way of affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. He also produced in evidence notification/letter Mark-A1 or Mark-A5, list of workers Mark-A6 and A7 and notification Mark-A8, letter of Pardhan Mark-A9, Account Statement Mark-A10, notice Mark-11 and reply of notice Mark-12.

7. Respondents have examined Shri Dhian Singh Verma, Director, M/s Nanal Hydro Project as RW1. He produced his affidavit Ext. RW1/A wherein he reiterated the facts stated in the reply. He also produced in evidence assessment report Ext. RW1/B, letter dated 26.3.2020 Ext. RW1/C, vehicle permit Ext. RW1/D, letter containing permission dated 31.3.2020 Ext. RW1/E, permit dated 27.4.2020 Ext. RW1/F, application dated 1.3.2020 Ext. RW1/G, joining letter Ext. RW1/H, notice Ext. RW1/J, letter dated 7.5.2020 Ext. RW1/K and sealed registered letter Ext. RW1/L.

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

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

Issue No. 1	: Yes
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

10. It is the contention of the petitioner as stated on oath is that he was employed as Junior Electrical Engineer by the respondent company/establishment on daily wage basis on 16.8.2018. He also submitted that he had continuously worked with the respondent till the month of April, 2020. Respondents have not denied that they had engaged the petitioner as an Engineer however it is asserted that he was trainee engineer *w.e.f.* 16.8.2018 till the date of his termination from 7.4.2020. It is pertinent to mention here that even if the petitioner is considered to be trainee engineer receiving salary being engaged by the respondent he falls within the definition of workman under Section 2 Clause (s) of the Industrial Disputes Act, 1947. The period of continuous service of the petitioner from 16.8.2018 till the date of his termination in the month of April, 2020 is not a disputed fact. Respondents have not produced the mandays chart of the petitioner in this regard and since they have withheld the record pertaining to continuous service of the petitioner and not denied it expressly it can be inferred that petitioner had worked continuously *i.e.* 240 days of work in each year of his employment and also 12 months preceding his termination.

11. The petitioner has submitted that after lockdown *w.e.f.* 24.3.2020 a person in Gram Panchayat Tissa-II was found corona positive on 6.4.2020 and entire village of Gram Panchayat Tissa-II was sealed and curfew passes was issued by SMD Tissa which were cancelled, due to this reason the petitioner was not able to reach the place of posting to perform his duty. He could only report for duty. After normalization of situation and lifting of the restriction, when he reported for duty on 6.5.2020 he was not allowed to join his duty but he was told that his services have been terminated. He has asserted that his absence from duty from 7.4.2020 to 6.5.2020 was not

intentional and wilful but due to reasons mentioned above. Contrary to this it is the stand of respondent that the respondent company had requested the local administration to continue with the services of the respondent company falling under essential service and accordingly the permission had been granted for taking their staff members from their camp i.e. Sharma Niwas to Power House and vehicle No.HP-44-2803 also given permission for this purpose. Despite this the petitioner did not obey the order and absented from duties. Consequent to this the services of the petitioner were terminated vide order Ext. RW1/K. A careful perusal of order Ext. RW1/K shows that the petitioner was alleged to have disobeyed the order and remaining absence from duty w.e.f. 7.4.2020. It was also mentioned in the letter that company had viewed the petitioner long wilful absence from duty seriously and his services were terminated. Consequent Section 2 Clause (oo) defines retrenchment as follows:—

> "(oo)["retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include - *[Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953)]*.
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or]"

12. The petitioner being a workman and respondent being a establishment within the provisions of the Industrial Disputes Act, 1947 were bound by the provisions of the Act and in case the termination of the petitioner was consequent to disciplinary action the procedure complying with the principle of natural justice ought to have been followed by the respondent company before dispensing with the services of the petitioner. In order to prove their case against the respondent the petitioner has merely produced on record the termination order Ext. RW1/K. The record produced by the respondents further pertains to the vehicle permit and the permission which have been granted by local administration to continue the work by the respondent company and its workers during the corona period. It is however clear from the documents produced by the respondents that the respondent had not issued any show cause notice to the petitioner neither any charge-sheet or any inquiry proceedings were carried out in order to prove that the petitioner had wilfully absented himself from the duties and thus made himself liable for the disciplinary action which would culminate into termination. It is clear that without following any due process the respondent company had terminated the services of the petitioner. In these circumstances the termination of the services of the petitioner clearly falls within the definition of retrenchment as mentioned above. It is also clear that neither any one month's notice nor any amount has been paid in lieu of such notice period which is clear violation of Section 25-F of the Industrial Disputes Act, 1947. RW1 Shri Dhian Singh Verma admits that the workmen shown in para no. 7 of the claim petition are still working with the company. He has not asserted that these workmen were not junior to the petitioner or had not been employed after appointment or termination of the petitioner thus there was clear violation of Section 25-G of the Industrial Disputes Act in the present case. The fact that respondent had subsequently provided employment to the petitioner does not absolve respondents from their responsibility or dispensing with the services of the petitioner by following the principle of natural justice as on 7.5.2020. The respondents have never given any notice of termination of the services of the petitioner nor made any payment of wages in lieu of the notice period. The act and conduct of the respondents while terminating the services of the petitioner was illegal and unjustified, accordingly issue no. 1 is decided in the favour of the petitioner.

Issue No. 2

13. In the light of observations made and the facts which have been discussed while discussing issue no. 1 above, it is evident that the services of petitioner were illegally terminated by the respondents on 7.4.2020 vide letter dated 12.5.2020 without complying with the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, thus the petitioner is held entitled for reinstatement of his service on daily wage basis from the date of his termination *i.e.* 7.4.2020 and all the consequential benefits of continuous service since the year 2018 without back wages. The petitioner is also held entitled to compensation of Rs. 1,00,000/- on account of illegal retrenchment is being carried out by the respondents. Issue No. 2 is decided accordingly.

Issues No. 3 to 5

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

15. The onus of proving these issues on the respondents the maintainability of petition specifically challenged on the ground that petitioner was engaged as trainee Engineer in the year 2018 on daily wage basis, the evidence on case file proves that respondents had deliberately tried to conceal the number of days for which the petitioner had worked with the respondents company. It is however established that the petitioner was continuously working with the respondent since 2018. Nothing emerges from the evidence to establish that the petitioner had concealed any true and material facts from this court as well as he has no cause of action to file the present claim. Accordingly issues No. 3, 4 and 5 are decided in the favour of the petitioner and against the respondents.

RELIEF

16. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement of his service on daily wage basis from the date of his termination i.e. 7.4.2020 and all the consequential benefits of continuous service since the year 2018 without back wages. The petitioner is also held entitled to compensation of Rs. 1,00,000/- on account of illegal retrenchment is being carried out by the respondents. Parties are left to bear their costs.

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

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

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

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

Reference No. : 52/2018
Date of Institution : 06.6.2018
Date of Decision : 22.10.2024

Shri Vinod Kumar s/o Shri Gurbir Singh, r/o VPO Garh Sukkar via Dari, Tehsil Dharamshala, District Kangra, H.P. ...*Petitioner.*

Versus

Shri Ram Murti Sharma, M/s Himachal Pradesh Gramin Bank Branch Dari, Tehsil Dharamshala, District Kangra, H.P. ...*Respondent.*

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

For the Petitioner : Sh. Rohit Panchkarna, Ld. Adv.
For Respondent : Sh. Dinesh Sharma, Ld. Adv.

AWARD

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

"Whether the termination of services of Shri Vinod Kumar s/o Shri Gurbir Singh, r/o V.P.O. Garh Sukka*r via* Dari, Tehsil Dharamshala, District Kangra, H.P. *w.e.f.* 14-02-2016 by Shri Ram Murti Sharma M/s Himachal Pradesh Gramin Bank Branch Dari, Tehsil Dharamshala, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/ management?"

2. Heard. Petitioner Shri Vinod Kumar has made statement that he does not want to pursue with the case *i.e.* Reference No. 52/2018 filed by him and withdraw the same unconditionally. His separate statement to this effect is recorded as well as identified by his learned counsel and placed on the file.

3. In view of the above, this Reference No. 52/2018 is dismissed as withdrawn.

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

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

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

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

Reference No. : 06/2019
Date of Institution : 24.01.2019
Date of Decision : 22.10.2024

Shri Jai Kishan s/o Shri Dayal, r/o Village Kalwara, P.O. Bakani, Tehsil Chamba, District Chamba, H.P. ...*Petitioner.*

Versus

The Divisional Forest Officer, Chamba, District Chamba, H.P. ...*Respondent.*

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

For the Petitioner : Sh. Madan Rawat, Ld. Adv.
For Respondent : Sh. Ajay Thakur, Ld. Dy.D.A.

AWARD

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner"

> "Whether the alleged termination of daily wages services of Shri Jai Kishan s/o Shri Dayal, r/o Village Kalwara, P.O. Bakani, Tehsil Chamba, District Chamba, H.P. from time to time during year, 2005 to September, 2017 and finally terminated by the Divisional Forest Officer, Chamba, District Chamba, H.P. during the September, 2017, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employers?"

2. The brief facts of the claim petition are that the petitioner was engaged on muster roll/daily wages basis beldar without any appointment letter in the year 2005 by the respondent department. It is asserted that the petitioner worked with the respondent department continuously for many years. No attendance card was provided to the petitioner since 2005 to till his termination. It is submitted that the State of Himachal Pradesh framed policy for regularization of daily wagers which required to work 240 days in each calendar year. The respondent however, did not disclose the actual numbers of days before the Conciliation Officer and that they had given fictional breaks to the petitioner. It is alleged that the services of the petitioner were retrenched without any notice of retrenchment or without giving any compensation. According to the petitioner, since breaks were intentionally given by the respondent, the breaks are to be counted as continuous service for the purpose of calculation of 160 days in view of Section 25-B of the Industrial Disputes Act, 1947. It is alleged that the services of the petitioner were terminated orally without any reason and without compliance with the mandatory provision of Section 25-F of the Industrial Disputes Act, 1947. The petitioner has submitted that he is very poor and having no source of income. He approached the department time and again but respondent had not paid any heed to the request of the petitioner/workman. The petitioner worked with the department as daily wages beldar till November, 2017 when his services were disengaged by the respondent without following the procedure laid down for the disengagement of services. It is also alleged that after termination of services of the petitioner the respondent re-engaged number of new workmen. There was sufficient work available with the respondent department at the time of illegal termination of the petitioner. Junior persons were retained and allowed to continue service without any breaks and they have since been regularized. It is alleged that respondent has intentionally violated the principle of 'Last Come First Go' under the Act. The petitioner was not given any opportunity of re-employment and preference has been given to other persons after illegal termination. According to the petitioner his services would not have been legally terminated and respondent intentionally

gave fictional breaks in order to complete 8 years continuous service as on November, 2017. Due to conduct of the respondent the petitioner has suffered huge financial loss and juniors have been regularized by the respondent who were engaged on muster roll basis. The petitioner is un-employed from the date of his illegal termination i.e. November, 2017. In view of these averments it is prayed that the respondent be directed to re-instate the services of the petitioner *w.e.f.* November, 2017 along-with seniority including continuity of services. It is alleged that illegal breaks from the year 2005 to November, 2017 are liable to be condoned and period in continuity of services of the petitioner be counted for the purpose of regularization. Petitioner also prayed for all consequential service benefits.

3. In reply respondent has raised preliminary objection qua maintainability. On merit, it is asserted that the petitioner was not engaged as daily wages labourer initially, but he was engaged by the Range Officer Upper Chamba for carrying out seasonal forestry works in Pakla Nursery Kalwara Beat Upper Chamba Range *w.e.f.* 11/2015, 08/2016, 11/2016, 12/2016, 01/2017, 04/2017 to 07/2017. He worked intermittently up to July, 2017 on bill basis. It is admitted that policy is framed by the State of Himachal Pradesh regarding regularization of daily wager workers. However, accordingly to the respondent the forestry works are seasonal in nature and subject to the availability of work and funds. Funds in the Kalwara beat was not available and as such petitioner was asked verbally to work in another beats, but the petitioner denied to do so. According to the respondent the petitioner did not complete 240 days in each calendar year and does not fulfil the conditions of Section 25-B of the Industrial Disputes Act, 1947 for the purpose of continuous service as such there is no violation of Section 25-F of the Industrial Disputes Act. It is asserted that the petitioner has left the work at his own sweet will and services of the petitioner never terminated. Other averments including violation of provision of Section 25-B have been denied and it is prayed that petition deserved to be dismissed.

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

5. On the basis of the pleadings of the parties, the following issues were framed on 26.11.2021 for adjudication and determination:—

1. Whether time to time termination of daily wages services of the petitioner by the respondent during year, 2005 to September, 2017 and final termination during year, 2017 was/is illegal and unjustified, as alleged? ...OPP.

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

3. Whether the claim petition is not maintainable in the present form? ..OPR.

Relief.

6. The petitioner in order to prove his case examined himself by way of affidavit Ext. PW1/A wherein he reiterated the facts stated in the claim petition. The petitioner also examined Sh. Rajinder Kumar by way of affidavit Ext. PW2/A, Sh. Desh Raj *vide* Ext. PW3/A, Sh. Bittu Ram *vide* Ext. PW4/A and Sh. Makholi Ram *vide* Ext. PW5/A. All these witnesses have stated that they had worked in Upper Range Bakan beat Kalwara and during this time beat guard Sh. Mohan Lal, B.O. Sh. Ram Saran and thereafter Beat Guard Sh. Rajinder Chopra, B.O. Sh. Amar Singh have worked under which Jarmo s/o Sh. Bagat Ram as well as Jaikishan s/o Sh. Dayal have

continuously worked along-with them. The petitioner has also tendered in evidence several muster roll obtained under RTI *i.e.* Ext. P1 to P29 and bill vouchers Ext. P30 to P44.

7. Respondent examined by way of affidavit Sh. Kritagya Kumar, IFS as RW1/A and he has reiterated the facts in his affidavit stated in the reply and tendered in evidence copies of bills Ext. RW1/B.

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

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

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

REASONS FOR FINDINGS

ISSUE No. 1

10. The petitioner has alleged that his services were engaged by the respondent in the year 2005 as beldar and he continued to work as such till the year 2017. Oral statements of the witnesses who had worked with the petitioner are also produced by way of evidence. The respondent on the other hand denied that the petitioner had worked with respondent from 2005 to 2017. It is asserted that the work done by the petitioner was merely seasonal in nature. The petitioner had worked on bill basis and muster roll basis, moreover, the petitioner left the work at his own sweet will. The petitioner in order to prove that he worked with the respondent in the year 2005 to 2017 has not only produced oral statement of the witness who had worked alongwith him in the same beat but also tendered documentary evidence of muster roll Ext. P1 to P29 and bill vouchers Ext. P30 to P44. RW Sh. Kritagya Kumar has admitted that as per muster roll the petitioner was engaged in the department in the year 2007. He has denied that the petitioner has worked 240 days during his engagement with the department and asserted that the petitioner has worked on bill basis and not as a daily wager at any point of time. Contrary this statement the petitioner asserted in the claim petition as well as the dispute raised before the Labour Officer that he was given intentional breaks in his service with a view to prevent him to complete 8 years of continuous service so that he does not become eligible for the purpose of regularization. The muster roll as well as the bill which have been produced on the case file by the petitioner are not disputed by the respondent. The respondent has also provided on record certain bill on the basis of which the payment was made to the petitioner. The muster roll Ext. P1 to P29 clearly show that right from the year 2005 till the year 2015 the petitioner has worked on muster roll basis, on various intervals. He was being alternatively employed in service on the basis of bill Ext. P30 to P44 during the course of this period. Pertinent to mentioned here that there is nothing on record to show that respondent has complied with the provision of Section 9-A of the Industrial Disputes Act, 1947 to give any notice to the worker regarding change in his service condition. It appears that the petitioner was being employed on various intervals on muster roll basis subsequently bill basis and again on muster roll basis so as to prevent him from completing 8 years service. The petitioner was temporarily employed, provided intentional breaks in his service with the view to deprive him from the status and privileges of permanent workman. It amounts to "unfair labour practice" under the Fifth Schedule of the Industrial Disputes Act, 1947.

11. It is asserted by the respondent that petitioner worked on temporary basis and on the basis of availability of work and funds. It is asserted that the work done by the petitioner was seasonal in nature. No such notification of seasonal work done by the petitioner was produced on the case file. Neither there is any evidence to show that the petitioner was not employed continuously due to non-availability of work and fund. On the contrary, the respondent employed the petitioner alternatively on muster roll basis and bill basis which clearly point towards the intentional fictional breaks in service of the petitioner in order to deprive him of the benefit of the continuous service. It is held by the **State of Himachal Pradesh and others in CWP No.789 of 2024, decided on 4.7.2024** has observed in para nos. 5 and 6 as follows:—

> "5. It is not in dispute that the petitioner is serving with the respondents-Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of "bill basis" but, fact of the matter still remains that be it a daily wager or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.
>
> 6. This Court of the considered view that the distinction, which is now being created by the respondents-Department between a daily wage worker and a bill base worker is violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India."

12. In view of above ratio laid down by the Hon'ble High Court the conduct of the respondent with respect to the work done by the petitioner also points towards the intentional breaks in service of the petitioner. The respondent has not produced any notice to show that the petitioner had abandoned the work out of his own sweet will. In light of the above discussion it is proved to the satisfaction of the court that the time to time termination of the daily wager service of the petitioner from the year 2005 to 2017 and finally 2017 is illegal and unjustified manner. Issue No. 1 is decided in favour of the petitioner.

ISSUE NO. 2

13. While deciding issue No. 1 it has been discussed that petitioner has worked with the respondent from the year 2005 to 2017 continuously either on muster roll basis or bill basis. Respondent changed service condition of the petitioner and did not allow him to complete continuously period of service so as to deprive him of consequential benefits. The petitioner is entitled for re-instatement in service from 2017 with all consequential benefits including regularization subject to availability of post as per policy of Government. The petitioner is also entitled for compensation of Rs. 1,00,000/- (Rs. One Lac only) in lieu of back wages. Thus, issue No. 2 decided in favour of the petitioner.

ISSUE NO. 3

14. Maintainability of the petition was primarily challenged on the ground that petitioner had not completed essential period of continuous service which would entitled him for the benefits and abandoned the service out of his own sweet will. The facts contrary to the same have emerged from the evidence. Hence, claim petition is maintainable in the present form. Issue No. 3 is decided in favour of the petitioner and against the respondent.

RELIEF

15. In view of my findings on the issues no. 1 to 3 above the reference is decided in favour of the petitioner. The respondent is directed to re-instate the services of the petitioner from the year 2017. The petitioner is also entitled for seniority, continuity in service with all consequential benefits including regularization subject to availability of post as per policy of Government. The respondent is also directed to pay lump-sum compensation to the tune of Rs. 1,00,000/- (Rs. One Lac only) to the petitioner in lieu of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 04/2019
Date of Institution : 24.01.2019
Date of Decision : 22.10.2024

Shri Jarmo s/o Shri Bhagat, r/o Village Kalwara, P.O. Bakani, Tehsil Chamba, District Chamba, H.P. ...*Petitioner.*

Versus

The Divisional Forest Officer, Chamba, District Chamba, H.P. ...*Respondent.*

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

For the Petitioner : Sh. Madan Rawat, Ld. Adv.
For Respondent : Sh. Ajay Thakur, Ld. Dy.D.A.

AWARD

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

"Whether the alleged termination of daily wages services of Shri Jarmo s/o Shri Bhagat, r/o Village Kalwara, P.O. Bakani, Tehsil and District Chamba, H.P. from time to time during year, 2005 to July, 2017 and finally terminated by the Divisional Forest Officer, Chamba,

District Chamba, H.P. during the year, 2017, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employers?"

2. The brief facts of the claim petition are that the petitioner was engaged on muster roll/daily wages basis beldar without any appointment letter in the year 2006 by the respondent department. It is asserted that the petitioner worked with the respondent department continuously for many years. No attendance card was provided to the petitioner since 2006 till his termination. It is submitted that the State of Himachal Pradesh framed policy for regularization of daily wagers which required work 240 days in each calendar year. The respondent however, did not disclose the actual numbers of days before the Conciliation Officer and that they had given fictional breaks to the petitioner. It is alleged that the services of the petitioner were retrenched without any notice of retrenchment or without giving any compensation. According to the petitioner, since breaks were intentionally given by the respondent, the breaks are to be counted as continuous service for the purpose of calculation of 160 days in view of Section 25-B of the Industrial Disputes Act, 1947. It is alleged that the services of the petitioner were terminated orally without any reason and without compliance with the mandatory provision of Section 25-F of the Industrial Disputes Act, 1947. The petitioner has submitted that he is very poor and having no source of income. He approached the department time and again but respondent had not paid any heed to the request of the petitioner/workman. The petitioner worked with the department as daily wages beldar till November, 2017 when his services were disengaged by the respondent without following the procedure laid down for the disengagement of services. It is also alleged that after termination of services of the petitioner the respondent re-engaged number of new workmen. There was sufficient work available with the respondent department at the time of illegal termination of the petitioner. Junior persons were retained and allowed to continue service without any breaks and they have since been regularized. It is alleged that respondent has intentionally violated the principle of 'Last Come First Go' under the Act. The petitioner was not given any opportunity of re-employment and preference has been given to other persons after illegal termination. According to the petitioner his services could not have been legally terminated and respondent intentionally gave fictional breaks in order to prevent him to complete 8 years continuous service as on November, 2017. Due to conduct of the respondent the petitioner has suffered huge financial loss and juniors have been regularized by the respondent who were engaged on muster roll basis. The petitioner is un-employed from the date of his illegal termination i.e. November, 2017. In view of these averments it is prayed that the respondent be directed to re-instate the services of the petitioner *w.e.f.* November, 2017 along-with seniority including continuity of services. It is alleged that illegal breaks from the year 2006 to November, 2017 are liable to be condoned and period in continuity of services of the petitioner be counted for the purpose of regularization. Petitioner also prayed for all consequential service benefits.

3. In reply respondent has raised preliminary objection qua maintainability. On merit, it is asserted that the petitioner was not engaged as daily wages labourer initially, but he was engaged by the Range Officer Upper Chamba for carrying out seasonal forestry works in Pakla Nursery Kalwara Beat Upper Chamba Range *w.e.f.* 11/2015, 08/2016, 11/2016, 12/2016, 01/2017, 04/2017 to 07/2017. He worked intermittently up to July, 2017 on bill basis. It is admitted that policy is framed by the State of Himachal Pradesh regarding regularization of daily wager workers. However, accordingly to the respondent the forestry works are seasonal in nature and subject to the availability of work and funds. Funds in the Kalwara beat was not available and as such petitioner was asked verbally to work in another beats, but the petitioner denied to do so. According to the respondent the petitioner did not complete 240 days in each calendar year and does not fulfil the conditions of Section 25-B of the Industrial Disputes Act, 1947 for the purpose of continuous service as such there is no violation of Section 25-F of the Industrial Disputes Act. It is asserted

that the petitioner has left the work at his own sweet will and services of the petitioner never terminated. Other averments including violation of provision of Section 25-B have been denied and it is prayed that petition deserved to be dismissed.

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

5. On the basis of the pleadings of the parties, the following issues were framed on 26.11.2021 for adjudication and determination:—

1. Whether time to time termination of daily wages services of the petitioner by the respondent during year, 2005 to July, 2017 and final termination during year, 2017 was/is illegal and unjustified, as alleged? ...OPP.

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

3. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

6. The petitioner in order to prove his case examined himself by way of affidavit Ext. PW1/A wherein he reiterated the facts stated in the claim petition. The petitioner also examined Sh. Desh Raj *vide* Ext. PW2/A, Sh. Rajinder Kumar *vide* Ext. PW3/A, Sh. Makholi Ram *vide* Ext. PW4/A and Sh. Bittu Ram vide Ext. PW5/A. All these witnesses have stated that they had worked in Upper Range Bakan beat Kalwara and during this time beat guard Sh. Mohan Lal, B.O. Sh. Ram Saran and thereafter Beat Guard Sh. Rajinder Chopra, B.O. Sh. Amar Singh have worked under which Jarmo s/o Sh. Bagat Ram as well as Jaikishan s/o Sh. Dayal have continuously worked along-with them. The petitioner has also tendered in evidence several muster roll obtained under RTI i.e. Ext. P1 to P26 and bill vouchers Ext. P27 to P45.

7. Respondent examined by way of affidavit Sh. Kritagya Kumar, IFS as RW1/A and he has reiterated the facts in his affidavit stated in the reply and tendered in evidence copies of bills Ext. RW1/B.

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

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

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

REASONS FOR FINDINGS

ISSUE No. 1

10. The petitioner has alleged that his services were engaged by the respondent in the year 2006 as beldar and he continued to work as such till the year 2017. Oral statements of the witnesses who had worked with the petitioner are also produced by way of evidence. The respondent on the other hand denied that the petitioner had worked with respondent from 2006 to 2017. It is asserted that the work done by the petitioner was merely seasonal in nature. The petitioner had worked on bill basis and muster roll basis, moreover, the petitioner left the work at his own sweet will. The petitioner in order to prove that he worked with the respondent in the year 2006 to 2017 has not only produced oral statement of the witness who had worked alongwith him in the same beat but also tendered documentary evidence of muster roll Ext. P1 to P26 and bill vouchers Ext. P27 to P45. RW Sh. Kritagya Kumar has admitted that as per muster roll the petitioner was engaged in the department in the year 2007. He has denied that the petitioner has worked 240 days during his engagement with the department and asserted that the petitioner has worked on bill basis and not as a daily wager at any point of time. Contrary this statement the petitioner asserted in the claim petition as well as the dispute raised before the Labour Officer that he was given intentional breaks in his service with a view to prevent him to complete 8 years of continuous service so that he does not become eligible for the purpose of regularization. The muster roll as well as the bill which have been produced on the case file by the petitioner are not disputed by the respondent. The respondent has also provided on record certain bill on the basis of which the payment was made to the petitioner. The muster roll Ext. P1 to P26 clearly show that right from the year 2007 till the year 2015 the petitioner has worked on muster roll basis, on various intervals. He was being alternatively employed in service on the basis of bill Ext. P27 to P45 during the course of this period. Pertinent to mentioned here that there is nothing on record to show that respondent has complied with the provision of Section 9-A of the Industrial Disputes Act, 1947 to give any notice to the worker regarding change in his service condition. It appears that the petitioner was being employed on various intervals on muster roll basis subsequently bill basis and again on muster roll basis so as to prevent him from completing 8 years service. The petitioner was temporarily employed, provided intentional breaks in his service with the view to deprive him from the status and privileges of permanent workman. It amounts to "unfair labour practice" under the Fifth Schedule of the Industrial Disputes Act, 1947.

11. It is asserted by the respondent that petitioner worked on temporary basis and on the basis of availability of work and funds. It is asserted that the work done by the petitioner was seasonal in nature. No such notification of seasonal work done by the petitioner was produced on the case file. Neither there is any evidence to show that the petitioner was not employed continuously due to non-availability of work and fund. On the contrary, the respondent employed the petitioner alternatively on muster roll basis and bill basis which clearly point towards the intentional fictional breaks in service of the petitioner in order to deprive him of the benefit of the continuous service. It is held by the **State of Himachal Pradesh and others in CWP No. 789 of 2024, decided on 4.7.2024** has observed in para nos. 5 and 6 as follows:—

> "5. It is not in dispute that the petitioner is serving with the respondents-Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of "bill basis" but, fact of the matter still remains that be it a daily wager or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.
>
> 6. This Court of the considered view that the distinction, which is now being created by the respondents-Department between a daily wage worker and a bill base worker is

violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India."

12. In view of above ratio laid down by the Hon'ble High Court the conduct of the respondent with respect to the work done by the petitioner also points towards the intentional breaks in service of the petitioner. The respondent has not produced any notice to show that the petitioner had abandoned the work out of his own sweet will. In light of the above discussion it is proved to the satisfaction of the court that the time to time termination of the daily wager service of the petitioner from the year 2006 to 2017 and finally 2017 is illegal and unjustified. Issue No. 1 is decided in favour of the petitioner.

ISSUE NO. 2

13. While deciding issue No. 1 it has been discussed that petitioner has worked with the respondent from the year 2007 to 2017 continuously either on muster roll basis or bill basis. Respondent changed service condition of the petitioner and did not allow him to complete continuous period of service so as to deprive him of consequential benefits. The petitioner is entitled for re-instatement in service from 2017 with all consequential benefits including regularization subject to availability of post as per policy of Government. The petitioner is also entitled for compensation of Rs. 1,00,000/- (Rs. One Lac only) in lieu of back wages. Thus, issue No.2 decided in favour of the petitioner.

ISSUE NO. 3

14. Maintainability of the petition was primarily challenged on the ground that petitioner had not completed essential period of continuous service which would entitled him for the benefits and abandoned the service out of his own sweet will. The facts contrary to the same have emerged from the evidence. Hence, claim petition is maintainable in the present form. Issue No. 3 is decided in favour of the petitioner and against the respondent.

RELIEF

15. In view of my findings on the issues no. 1 to 3 above the reference is decided in favour of the petitioner. The respondent is directed to re-instate the services of the petitioner from the year 2017. The petitioner is also entitled for seniority, continuity in service with all consequential benefits including regularization subject to availability of post as per policy of Government. The respondent is also directed to pay lump-sum compensation to the tune of Rs. 1,00,000/- (Rs. One Lac only) to the petitioner in lieu of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 21/2020
Date of Institution : 02.3.2020
Date of Decision : 22.10.2024

Shri Kehar Singh s/o Shri Raghu Ram, r/o Village Talori, P.O. Sundla, Tehsil Salooni, District Chamba, H.P. ...*Petitioner.*

Versus

The Divisional Forest Officer, Churah Forest Division, Salooni, District Chamba, H.P. ...*Respondent.*

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For Respondent : Sh. Ajay Thakur, Ld. DDA

AWARD

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

> "Whether the action of the employer *i.e.* the Division Forest Officer, Churah Forest Division, Salooni, District Chamba, H.P. not to regularise the services of Shri Kehar Singh s/o Shri Raghu Ram, r/o Village Talori, P.O. Sundla, Tehsil Salooni, District Chamba, H.P. *w.e.f.* 01.01.2002 after completion of continuous service of 10 years, as per policy of the Himachal Pradesh Government, as alleged by the workman, is legal and justified? If not, what relief of regularization of services, seniority and past service benefits above aggrieved workman is entitled as per demand notice dated-nil received on 12.11.2018 (copy enclosed) from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner/workman belongs to Tehsil Salooni, District Chamba and was initially engaged on muster roll basis/daily wage basis beldar without any appointment letter in the year 1991 by the Forest Division Churah/Salooni and continuously worked with intermittent breaks till 31.10.2018 with the department. The petitioner has retired from service of the department on 31.10.2018. The services of petitioner were engaged by the department in the month of November, 1991 and after period of more than 26 years the services of petitioner were not regularized by the department whereas many juniors workers have regularized under 10 years regularization scheme. It is further submitted that the petitioner made various requests to the respondent department for regularization of his services but he was not regularized and subsequently he retired from service. The overall seniority list of daily wage workers were not got circulated by the department nor got noted by the workmen. It is also alleged that principle of 'last come first go' as embodied in Section 25-G of the Industrial Disputes Act, 1947 was not followed by the department. The petitioner worked with the department on muster roll basis since November, 1991 and his juniors who joined the department after his joining were regularized much prior to the petitioner. The petitioner has submitted that he is entitled for regularization after completion of continuous service of 10 years as on 31.12.2001 counting 10 years from December, 1991 thus he was entitled for regularization *w.e.f.* 1.1.2002 as per judgment of Apex Court. It is asserted that the petitioner was never charge-sheeted for any act of indiscipline,

negligence of work or misconduct and worked with full devotion. In the light of these averments the petitioner has prayed to regularize his services as on 1.1.2002 under 10 years regularization policy of Himachal Pradesh Government along-with all consequential benefits and seniority from the date of initial appointment.

3. In reply to the claim petition the respondent raised preliminary objections qua maintainability, estopple, delay and laches, application not being maintainable due to suppression of material facts and applicant not making any representation before concerned department. On merits, it is not admitted that the petitioner was engaged as daily wage worker though it is asserted that he was initially engaged as part-time worker during 1991 for four hours duty in a day. According to respondent he was converted from part-time to daily wage basis vide letter No. Ft.HB (15)-177/2002 (E-III), Forest Department H.P. dated 30.7.2004. It is further submitted that the petitioner was engaged in the month of November, 1991 as part-time which was later on converted into daily wage basis in the year 2004 after completion of prescribed norms fixed by the State Government his name was considered in the seniority as it stood on 1.1.2016. The name of petitioner appeared at serial no. 259 as per Government letter No. PER(AP)-C-B(2)-1/2006-Vol.III dated 22nd February, 2010 the age of daily wage worker had ceased to be 60 years. The petitioner/applicant was initially a part-time worker when he was converted into full time daily wager in the year 2004. After his daily wager services he was to be counted for regularization. However the petitioner had completed 8 years of daily wage service in the year 2012 as per Government policy but there was no vacancy at that time in the department. For regularization in the seniority list of daily wager the name of petitioner appeared at serial no. 259. There were 258 daily wagers senior to petitioner who were regularized on 19.6.2017. It is asserted that the petitioner/applicant had already attained the age of superannuation of 58 years as on 30.9.2015. The date of birth of the petitioner was 1.10.1957 and thus he was rightly disengaged from his service on 30.9.2015 on attaining age of 58 years. It is also asserted that the case of Mool Raj Upadhaya's is not applicable in the present case. There was no work charge establishment in the forest department and the petitioner was overage and he could not be considered for the purpose of regularization. Other averments made in the petition are denied and it is prayed that the petition be dismissed.

4. The petitioner by way of rejoinder has denied preliminary objections raised in the reply and reasserted facts and averments made in the petition.

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

1. Whether the action of the respondent not to regularize the services of the petitioner *w.e.f.* 01.01.2002 by the respondent is/was illegal and unjustified? ..OPR

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

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

4. Whether the petitioner is estopped to his act, conduct and acquiescence to file the present case as alleged? ...OPR

5. Whether the claim petition is bad on account of delay and latches as alleged? ...OPR

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition.

7. Respondent has examined Shri Sushil Kumar Guleria, Divisional Forest Officer, Churah Forest Division at Salooni, District Chamba by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply and alos produced on record in evidence copy of letter dated 30 July 2006 Ext. RW1/B, copy of letter dated 4 March 2010 Ext. RW1/C, copy of another letter dated 24 September 2016 Ext. RW1/D, copy of letter dated 23 June 2017 Ext. RW1/E, list of eligible daily wager Ext. RW1/F, copy of matric certificate of petitioner Ext. RW1/G, copy of mandays chart Ext. RW1/H, copy of bills Ext. RW1/J, mandays of petitioner Ext. RW1/K and copies of bills Ext. RW1/L.

8. I have heard the learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

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

Issue No. 1	: Partly Yes
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The petitioner claimed to be engaged by the respondent on muster roll basis as beldar since November, 1991 at Forest Division Churah/Salooni. Thus according to him he was entitled for regulairzation of services after completion of 10 years of services as on 31.12.2001 *i.e. w.e.f.* 1.1.2002. Contrary to the claim of respondent the petitioner has asserted that his services were engaged only on part-time basis from November, 1991 till 30.7.2004. It is further contention of respondent that the services of the petitioner were converted as daily wager only on 30.7.2004. Letter Ext. RW1/B is produced on record by the respondent in order to prove that on 30.7.2004 the services of the petitioner were converted to daily wage basis from part-time basis. The mandays chart of the petitioner is Ext. RW1/H. The mandays chart shows that the petitioner continuously worked as part-time chowkidar from Ferbuary, 1991 till July, 2004. The record of payment made to the petitioner by the respondent department during this period is produced on the case file. The said record reveals that petitioner was working not only in the capacity of chowkidar but also done activities of cleaning rooms, bath room, kitchen etc. While making payment the petitioner is described as part-time chowkidar, the record of his initial engagement that he was employed only for four hours in a day is not produced. Similarly the record of payment does not described the number of hours which have been put by the petitioner while working with the respondent on each day. No doubt he has still described as part-time worker. The record of payment shows that the payment of petitioner was made on monthly basis and does not mention that he put only four hours work per day. In these circumstances the mandays chart does not reflect the actual hours of the work put in by the petitioner in each day. This fact strengthen the plea of petitioner that he was not a part-time worker but working continuously with the respondent department. The Hon'ble High

Court of Himachal Pradesh in **Sher Singh vs. State of H.P.& Ors., Latest HLJ 2022 (HP) (2) 1169** has held in para nos. 7 to 10 as follows:—

"7. On 24.8.2022, the respondents were directed to produce records pertaining to the service of petitioner. In compliance to said order, the record was produced on 14.9.2022 and on its perusal, it has been found that the petitioner has completed 240 days in each calendar year since 1.1.2008 till 2021 and even in this current year also, he has completed 242 days till 31.8.2022. The only contention of respondents is that the petitioner was engaged on hourly basis and not on daily basis. This distinction is clearly superfluous. Respondents with their reply have annexed the documents, reflecting working hours of the petitioner. As per these documents, petitioner has been rendering service for seven hours every day and his employment was continuous. In these circumstances, the conversion of hours into days can clearly be said to be unjustified or illegal.

8. This Court in CWPOA No. 6748 of 2019, titled as, Vikram Singh vs. State of H.P. & others, while dealing with identical issue has held as under:- "10. In CWPOA No. 1833, the respondents had raised same objections as raised in the present case. The Coordinate Bench after perusing the official records produced by the respondents held as under:—

"4. In the aforesaid documents, which are part of the record of the Government, petitioner, Smt. Asha Devi has been shown to be working as daily wager *w.e.f.* 12.3.2001 and she has been shown to have worked for more than 240 days in the years, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009. Though, in the aforesaid document alteration with pen has been made to make it appear that this seniority list-cum-yearwise days of engagement of daily wagers also pertains to seasonal workers, but learned Additional Advocate General was unable to dispute that all the persons named in this list were engaged on daily wage basis and if itis not then how the name of petitioner Smt. Asha Devi came to be reflected in the afore list, if she was given appointment on hourly basis. Besides above, of the record, as detailed hereinabove, reveals that in the years 2001 to 2015 petitioner worked for more than 240 days in a calendar year. In this document, it has been nowhere mentioned that petitioner herein was appointed on hourly basis and as such, there appears to be merit in the claim of the petitioner that she had been working regularly on daily wages since her initial appointment in the year, 2001. At this stage, learned Additional Advocate General made available some documents to demonstrate that petitioner herein had been working on hourly basis not on daily wage basis, however, having carefully perused the aforesaid documents, which otherwise appear to be a bill raised by Incharge of Fruit Processing-*cum*-Training Centre, Nurpur with regard to payment of the workers, reveals that petitioner as well as other similarly situate persons had been working for 7-8 hours every day, meaning thereby they like other daily wagers were also performing duties for the whole day and not on hourly basis. Needless to say, Government servant is obliged to work for 7 to 8 hours *i.e.* 10 to 5 P.M. in the government offices of State of Himachal Pradesh. Though, having carefully scrutinized the entire record, as has been taken note hereinabove, this Court is fully convinced that petitioner had been rendering her services from the date of her initial appointment till date on daily wage basis, but still if aforesaid documents i.e. bills placed on record are taken into consideration even then petitioner cannot be said to be working on hourly basis, especially when

respondents have not been able to refute/dispute that petitioner had been working for 7 to 8 hours per day.

5. Faced with the aforesaid situation, Mr. Sudhir Bhatnagar, learned Additional Advocate General argued that even as per policy of regularization petitioner is/was firstly required to be converted to daily wage basis from part time and thereafter she can claim benefit of regularization. But this Court is not impressed with the aforesaid submission made on behalf of learned Additional Advocate General, since it stands duly established on record that from the date of her initial appointment petitioner has been working on daily wage basis, there is/was no requirement if any for respondents to first convert her services from part time to daily wage so as to make her entitled for claiming benefit of regularization in terms of policy of regularization framed by the Government of Himachal Pradesh from time to time.

6. Consequently, in view of the above, this Court finds merit in the present petition and accordingly same is allowed and respondents are directed to extend the benefit of regularization to the petitioner in terms of the regularization policy framed by the Government of Himachal Pradesh in the year, 2009, from the date she had completed 8 years daily wage service with 240 days in each calendar year. The consequential/ financial benefits shall however be restricted to three years prior to filing of the Original Application No. 374 of 2016".

9. Thus, the case of petitioner herein is squarely covered by the judgment, passed by this Court in CWPOA No. 6748 of 2019. The reasons detailed therein shall apply mutatismutandis to the present case. 10. Consequently, the petition deserves to be allowed. His termination is set aside. Respondents are directed to extend the benefit of regularization to the petitioner from the date, petitioner had completed eight years of service with 240 days in each calendar year, in terms of applicable regularization policy framed by the State Government. Consequential financial benefits shall, however, be restricted to thr present case.

10. Consequently, the petition deserves to be allowed. His termination is set aside. Respondents are directed to extend the benefit of regularization to the petitioner from the date, petitioner had completed eight years of service with 240 days in each calendar year, in terms of applicable regularization policy framed by the State Government. Consequential financial benefits shall, however, be restricted to three years prior to the filing of the Original Application No. 7632 of 2016. Pending applications, if any also stand disposed of".

11. In the present case also there is no initial record regarding payment of petitioner only for four hours per day. There is no record to show that he has not put in work for more than four hours as has asserted by the petitioner. This distinction drawn by the department alleging that petitioner was not a daily wager employee till 2004 is not acceptable for the present case also.

12. The date of birth of petitioner is 1.10.1957 vide Ext. RW1/G which implies that the petitioner would have attained the age of 60 years as on 1.10.2017. According to respondent the services of petitioner were superannuated at the age of 58 years on 30.9.2015 vide notification Ext. RW1/C. This notification was applicable to daily wage employee after the year 2001. It is already discussed that there is no material produced by respondent to show that the petitioner was employed merely for four hours per day though described as a part-time employee. The distinction being drawn by the respondent appears to be superfluous. The petitioner can safely be presumed to

have worked throughout the days from the number of mandays which have been produced on record. Thus the petitioner is deemed to be working as a daily wager even prior to the year 2001. In these circumstances the age of superannuation of the petitioner would be 60 years and he should have retired in the month of October, 2017. The list of eligible daily wagers considered for regularization against from numerous and sanctioned post as on June, 2017 as Ext. RW1/F. Thus the sanction posts were available with the concerned department as on June, 2017. The petitioner had already completed 10 years of continuous service as daily wager by that time. Thus petitioner was entitled for regularization *w.e.f.* June, 2017 and his services should have superannuated as on 1.10.2015 is bad on eyes of law. The petitioner was accordingly entitled for regularization along-with other workers mentioned in the Ext. RW1/F *w.e.f.* June, 2017.

13. It is the contention of the learned Counsel for the petitioner that the petitioner should have been regularized after completion of 10 years of his services i.e. in the year 2001. The said contention is not maintainable in view of letter Ext. RW1/D and the fact that the eligible daily wagers senior as well as junior to the petitioner were considered for the purpose of regularization in June, 2017 when the sanctioned posts with the department arose. In the light of above discussion it is established that action of the respondent not to regularize the services of petitioner w.e.f. June, 2017 was illegal and unjustified. Accordingly issues no.1 is partly decided in the favour of petitioner.

Issue No. 2

14. In the light of observations made and the facts which have been discussed while discussing issue no. 1 above, it is evident that the services of petitioner should have superannuated on 1.10.2017 and his services should have been regularized in the month of June, 2017. Thus the petitioner is held entitled for the regularization of his services from June, 2017 along-with all consequential benefits which would have been available to him in the above circumstances considering that he should have been superannuated on 1.10.2017. Issue no. 2 is decided accordingly.

Issues No. 3 to 5

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

16. The onus of proving these issues on the respondent the maintainability of petition essentially challenged on the ground that petitioner was not entitled for regularization as he retired from service much prior availability of the regular sanctioned posts. However the facts contrary to have been emerged from the evidence on the case file and thus the claim of the petitioner is maintainable. No such facts appeared from the evidence of respondent which would establish that conduct of the petitioner estopped him from claiming the relief in his favour. The present dispute was raised before the appropriate authority within the reasonable period of time accordingly it cannot be held that the claim petition was bad for delay and laches. Accordinlgy isseus no. 3 to 5 are decided in the favour of petitioner.

RELIEF

17. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The petitioner is held entitled for the regularization of his services from June, 2017 along-with all consequential benefits which would have been available to him in the above circumstances considering that he should have superannuated on 1.10.2017. Parties are left to bear their costs.

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

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

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

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

Reference No. :31/2022
Date of Institution : 31.3.2022
Date of Decision : 23.10.2024

Shri Malkeet Singh s/o Shri Pritam Singh, r/o VPO Talara, Tehsil Fatehpur, District Kangra, H.P. ...*Petitioner.*

Versus

1. The Executive Engineer, I&PH Division, Nurpur, District Kangra, H.P. (Principal Employer).

2. The Proprietor, M/S Vishwakarma Engineering Services Jachh, P.O. Jassur, Tehsil Nurpur, District Kangra, H.P. (Contractor) ...*Respondents.*

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

For the Petitioner : None
For Respondent No.1 : Sh. Anil Sharma, Ld. Dy. D.A.
For Respondent No.2 : Sh. Vijay Kaundal, Ld. Adv. Vice

AWARD

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

"Whether the termination of services of Shri Malkeet Singh s/o Shri Pritam Singh, r/o V.P.O. Talara, Tehsil Fatehpur, District Kangra, H.P. by (i) the Executive Engineer, I&PH Division, Nurpur, District Kangra, H.P. (Principal Employer) (ii) the Proprietor, M/s Vishwakarma Engineering Services Jachh, P.O. Jassur, Tehsil Kangra, H.P. (Contractor) *w.e.f.* 19-06-2019 (as alleged by workman), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers".

2. Heard. It is pertinent to mention here that the summon sent for the service of the petitioner in which petitioner Shri Malkeet Singh has requested/stated that he does not want to proceed with this case and his case should be closed.

3. In view of the above, Reference No. 31/2022 is dismissed as withdrawn.

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

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

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

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

Reference No. : 79/2015
Date of Institution : 25.2.2015
Date of Decision : 25.10.2024

Shri Nanak Chand s/o Shri Mohan Lal, r/o Village Leo, P.O. Shali, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
...*Respondent.*

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For Respondent : Sh. Anil Sharma, Ld. Dy.D.A.

AWARD

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

"Whether termination of the services of Shri Nanak Chand s/o Shri Mohan Lal, r/o Village Leo, P.O. Shali, Tehsil Pangi, District Chamba, H.P. during September, 2012 by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner/workman belongs to Tehsil Pangi, District Chamba. The area of Pangi is a remote part of the District which is a scheduled tribe area and hard area. The State of Himachal Pradesh had provided single line administration and respondent is holding of the post of Divisional Forest Officer in Division Pangi. It is submitted that the petitioner was engaged on muster roll on daily wage basis as beldar without any appointment letter during year 1996 and had continuously worked with intermittent breaks till September, 2012 with respondent department. During this time the services of petitioner/workman were engaged and disengaged and he was given fictional breaks from time to time so as not to complete 160 days in each calendar year which was essential for the purpose of regularization. It is alleged that the services of junior workmen were retained continuously on muster roll. The State Government has framed policy for regularization of daily wage worker which required 160 days in a calendar year for tribal area. The respondent did not disclose actual number of days before Conciliation Officer. The respondent gave fictional breaks to the petitioner and retrenched him without serving any notice of retrenchment or compensation in lieu of retrenchment. According to the petitioner such breaks are counted for the purpose of calculation of 160 days in view of Section 25-B of the Industrial Disputes Act, 1947. The petitioner has pleaded that he is poor and he has no source of income. After his termination he has approached the respondent time and again but the respondent department did not pay any heed to his request. The petitioner belongs to remote corner of District Chamba and the State has not provided any labour office or any other authority which could adjudicate cases of workmen under the Industrial Disputes Act, 1947 at Pangi. He tried his level best to take up the matter with the respondent department however respondent assured orally to re-engage but nothing fruitful was done to the petitioner. He further alleges that despite availability of sufficient work with the respondent department his services were illegally terminated and he was not allowed to continue without any breaks. It is alleged that respondent department has violated the principle of 'last come first go'. He has also mentioned the name of various workmen who had either been appointed along-with him or after his appointment and are still working continuously with the department. The petitioner never remained close for work since 1996 to the date of his illegal termination but respondent department had not provided work for which there was no fault on the part of the petitioner. It is asserted that the petitioner was never charge-sheeted for any act of indiscipline, negligence of work or misconduct and as such he had worked with full devotion with the respondent. The petitioner is unemployed from the date of his illegal termination i.e. September, 2012 till date and he was nowhere gainfully employed since then and as such he is entitled for back wages. It is asserted that while terminating the services of the petitioner the respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Act as well as Articles 14, 16 and 21 of Constitution of India. Moreover, the action of the respondent was also malafide, arbitrary, unconstitutional, illegal, highly unjustified and also against the principle of natural justice. The petitioner has prayed that the oral order of termination/retrenchment of services of petitioner by the respondent be set aside being illegal, arbitrary and highly unjustified. He also prayed that the respondent be directed to reinstate the petitioner in his services w.e.f. September, 2012 along-with seniority including continuity of service for the period of breaks given to him by the respondent.

3. In reply to the claim petition the respondent raised preliminary objections qua maintainability, estopple, petitioner not coming to the court with clean hands and petition being bad on account of delay and laches. On merits, it is asserted that petitioner had been engaged in Sach Range of Pangi Forest Division on muster roll as daily wage worker *w.e.f.* 11/1999. It is further submitted that the petitioner worked intermittently till 10/2008 and had not completed 160 days of work in each calendar year. Moreover various forestry related works are alleged to be generally seasonal and continuation of works depended upon the availability of funds and works. It is asserted that the petitioner had abandoned and left the work at his own will and no fictional breaks were ever given to him. The petitioner had worked with the department as per his convenience, therefore, there was no violation of Section 25-B of the Act. Respondent had denied that they had

engaged and disengaged the services of petitioner by giving him fictional breaks. They further alleged that petitioner has left the work at his own will as such no fictional breaks were ever given to the petitioner. According to the respondent there was no violation of provisions of the Industrial Disputes Act, 1947 and they have not violated the principle of 'last come first go'. It is again asserted that petitioner left the work at his own sweet will in 2008. It is asserted that the services of daily wager had been regularized by the respondent department after having fulfilled condition of the Government policy. It is asserted that the services of the petitioner could not be considered towards regularization due to the reason he has not completed seven years continuously with minimum 160 days of work in a calendar year. Other averments made in the petition are denied and it is prayed that the petition deserves to be dismissed.

4. The petitioner by way of rejoinder has denied preliminary objections raised in the reply, facts stated in the petition are reaffirmed and reasserted.

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

1. Whether termination of the services of the petitioner *w.e.f.* September, 2012 by the respondent is/was illegal and unjustified as alleged? ...OPP

2. If issue no. 1 is proved in affirmative, 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 come to the court with clean hands as alleged? ...OPR

5. Whether the petitioner is estopped by his act and conduct to file the present case, as alleged? ...OPR

6. Whether the claim petition is bad on account of delay and latches as alleged? OPR

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. He has also tendered in evidence seniority list Ext. PW1/B and demand notice Ext. PW1/C. The petitioner has also produced on record information under RTI regarding engagement and regularization of workers Ext. PX.

7. Respondent has examined Shri Sachin Sharma, Divisional Forest Officer, Pangi Forest Division, Killar by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply and also produced on record in evidence copy of mandays chart of petitioner Ext. RW1/B.

8. I have heard the learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

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

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : No

Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The petitioner has stated on oath that he was engaged on muster roll on daily wage basis as a beldar without any appointment letter during year 1996 and had continuously worked with intermittent breaks till September, 2012 with respondent department. During this time the services of petitioner/workman were engaged and disengaged and he was given fictional breaks from time to time so as not to complete 160 days in each calendar year which was essential for the purpose of regularization. He also alleged that he worked with intermittently till September, 2012 and he was not allowed to complete 160 days in each calendar year which was essential for regularization purpose. He also alleged that the breaks which were intentionally given by the respondent in his services have to be counted for the purpose of continuous service and also for the purpose of calculation of 160 days in view of Section 25-B of the Industrial Disputes Act, 1947. On contrary it is the case of the respondent that petitioner was merely engaged as a daily waged worker in Saach range of Pangi Forest Division and was engaged 11/1999. The petitioner however worked intermittently with the respondent till October, 2008 and he never completed 160 days in any calendar year. It is specific case of the respondent that petitioner was not terminated from service but he left the service out of his own sweet will. Thus there was no violation of the provisions of the Industrial Disputes Act, 1947. It is also asserted by the respondent that they have never given any fictional breaks to the petitioner as work of the department was seasonal in nature. Neither any junior to petitioner was engaged or regularized by the respondent. The petitioner in his cross-examination has denied that he was engaged in November, 1999. He also denied that he was irregular from his work and wilfully abandoned the work. He has denied that the his services were never retrenched. He denied that he had voluntarily left the work in order to get higher rates somewhere else. He denied that the respondent had not violated the provisions of the Industrial Disputes Act. RW1 Shri Sachin Sharma has admitted in his cross-examination that no notice was ever served upon the petitioner by the department. He has asserted that the work of department is seasonal in nature since the funds are exhausted and work is completed the employment comes to an end. He has admitted that workmen engaged with the petitioner and after engagement of the petitioner were regularized with the passage of time. It however asserted by him that these workers were regularized who were continuous in service. It is argued by the learned counsel for the petitioner that intermittent nature of the work alleged to have been done by the petitioner was not due to the act and conduct of the petitioner. Learned counsel has relied upon the ratio laid down by the Hon'ble High Court of H.P. in **State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286** held in paras no. 10, 11 and 13 as follows:

> "10. Indisputably, the workman was engaged as a daily waged beldar on 21.06.1987 and he, with frictional breaks, worked upto 11.12.2000. As per the petitioners, the workman himself abandoned the job. It is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. The workman did fails to report for duty does not in any way raise a presumption that the workman himself left the job. Admittedly, while analyzing the statement of RW-1, it is manifest that no notice was served upon the petitioner asking him to resume duties. Even if, it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman, but

there is no evidence which reveals that the employer ever conducted any disciplinary inquiry. Therefore, the plea of willful absence, unestablished.

11. It has also come on record that fresh hands were engaged by the employer without affording opportunity to the workman. The seniority list, Ex. RW-1/B, if read in conjunction with statement of RW-1, clearly demonstrates that persons junior to the workman are serving with the petitioners, which is in defiance to the principle of 'last go first come'. Therefore, provisions of Sections 25-G and 25-H of the Act have been contravened and it is not obligatory for the workman to have completed 240 days in a block of 12 calendar months preceding termination to derive the benefit under these sections of the Act. As per the petitioners, Section 25-F of the Act, is not applicable as the workman did not complete 240 days in cumulative period of 12 calendar months preceding his termination.

13. In view of the above stated facts it is held that award of learned Presiding Judge Labour Court-*cum*-Industrial Tribunal Dharamshala in reference No. 15 of 2010, decided on 13.09.2012, is in accordance with proved facts and is in accordance with law. It is further held that there is no illegality in award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal, Dharamshala. Therefore, the writ petition is without any basis, requires dismissal and is accordingly dismissed. No order as to costs. All pending application(s), if any, also stand(s) disposed of".

11. Learned Counsel has vehemently argued that the respondent has failed to produce any notice or any disciplinary action pursuant to such notice which would point towards the wilful abandonment of the work by the petitioner. The respondent has also not produced any notification in order to prove that work for which the petitioner was engaged was only seasonal or temporary work. It is admitted by the respondent that they have given continuous work to the workmen who were engaged along-with the petitioner and also the workmen who were engaged after his engagement. It clearly implies that respondent has intentionally provided intermittent breaks to the petitioner with a view to not to allow him to complete 160 days of continuous service in every year so as to disentitle him from the benefits of regularization. The mandays chart Ext. PX which is the information under RTI with regard to the workers who have been engaged and regularized in the Forest Division Pangi also shows that workers who were appointed in the year 1997 and also the juniors have been regularized subsequently by the department. This document as well as the statement made by RW1 Shri Sachin Sharma clearly defeat the case of respondent regarding only the seasonal nature of work being available with the department. No credible reason has been stated by the respondent which would lead this court to plea that there was not enough work available for the petitioner during the period his services were taken by the respondent department. Similarly in the absence of any notice or subsequent disciplinary action requiring the petitioner to join his work with the respondent it cannot be presumed that petitioner has left service out of his own free will. It is also clear from the case file that the respondent has failed to comply with the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act. Consequently the issue no.1 is decided in the favour of the petitioner.

Issue No. 2

12. It is proved to the satisfaction of this court that petitioner had worked with respondent department from the year 1996 till the year 2012. The mandays chart which have been reflected in Ext. RW1/B do not clearly show the actual work done by the petitioner. In fact it is well established that the respondent has failed to provide the work to the petitioner in a continuous manner and intentionally gave him intermittent breaks with a view to prevent him from completing 160 days in each calendar year of his engagement with the respondent. It is also proved that the petitioner has

not left the work of his own free will. Accordingly the termination of the petitioner by the respondent *w.e.f.* September, 2012 is declared to be illegal termination. The respondent is also liable to reinstate the services of the petitioner along-with seniority and continuity in service from September, 2012. The respondent is also directed to count period of employment from 1999 to 2012 for continuity of service of the petitioner for the purpose of regularization. In lieu of back wages the respondent is directed to pay compensation of Rs. 1,00,000/- to the petitioner along-with all consequential benefits as per policy of the State Government. Hence, issue no.2 is decided in the favour of petitioner.

Issues No. 3 to 6

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

14. The onus of proving these issues was on the respondent. The main contention of respondent was that the petitioner has not completed 160 days of service in a calendar year in order to calculate the continuous service from the year 1996 to year 2012. The contrary facts have emerged and it is proved that the respondent has provided intermittent breaks to the petitioner and he was not allowed to continue his service due to the act and conduct of the respondent. The petitioner has clearly pleaded that he had time and again approached the respondent with his request to set aside illegal termination and provide continuous service which was not accepted by the respondent. The petitioner has raised the dispute within requisite period and petition could not be held to be bad on account of delay and laches. Nothing could be produced in the evidence to show that the petitioner has suppressed the facts which were necessary for the adjudication of the case. No such facts appeared from the evidence of respondent which would establish that conduct of the petitioner estopped him from claiming the relief in his favour. In these circumstances the delay in raising a dispute with the appropriate authority is liable to be condoned. It cannot be held that the claim petition was bad on account of delay and laches, hence issues no. 3, 4, 5 and 6 are decided in the favour of the petitioner.

RELIEF

14. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner along-with seniority and continuity in service. The respondent is also directed to count period of intermittent breaks in continuity of service of the petitioner for the purpose of regularization. In lieu of back wages the respondent is directed to pay compensation of Rs.1,00,000/- to the petitioner along-with all consequential benefits as per policy of the State Government. Parties are left to bear their costs.

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

Announced in the open Court today, this 25th day of October, 2024.

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

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

Reference No. : 444/2015
Date of Institution : 29.10.2015
Date of Decision : 25.10.2024

Shri Basant Singh s/o Shri Budhi Ram, r/o VPO Rei, Tehsil Pangi, District Chamba, H.P.
...Petitioner.

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
...Respondent.

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For Respondent : Sh. Anil Sharma, Ld. Dy.D.A.

AWARD

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

"Whether termination of the services of Shri Basant Singh s/o Shri Budhi Ram, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. during June, 2009 by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner/workman belongs to Tehsil Pangi, District Chamba. The area of Pangi is a remote part of the District which is a scheduled tribe area and hard area. The State of Himachal Pradesh had provided single line administration and respondent is holding of the post of Divisional Forest Officer in Division Pangi. It is submitted that the petitioner was engaged on muster roll on daily wage basis as beldar for sometime and on sometimes on bill basis without any appointment letter during year 1997 in Forest Range Purthi and thereafter he continuously worked with intermittent breaks till 2009 with respondent department. During this time the services of petitioner/workman were engaged and disengaged and he was given fictional breaks from time to time so as not to complete 160 days in each calendar year which was essential for the purpose of regularization. It is alleged that the services of junior workmen were retained continuously on muster roll. It is further submitted that the petitioner had worked with the respondent department continuously for many years but he was not provided any casual card/attendance card from 1997 till his illegal termination. The State Government has framed policy for regularization of daily wage worker which required 160 days in a calendar year for tribal area. The respondent did not disclose actual number of days before Conciliation Officer. The respondent gave fictional breaks to the petitioner and retrenched him without serving any notice of retrenchment or compensation in lieu of retrenchment. According to the petitioner such breaks are counted for the purpose of calculation of 160 days in view of Section 25-B of the Industrial Disputes Act, 1947. The petitioner has pleaded that he is a poor and he has no source of income. After his termination he has approached the respondent time and again but the

respondent department did not pay any heed of his request. The petitioner is belongs to remote corner of District Chamba and the State has not provided any labour office or any other authority which could adjudicate cases of workmen under the Industrial Disputes Act, 1947 at Pangi. He tried his level best to take up the matter with the respondent department however respondent did not pay any heed to his request and hence he raised industrial dispute with Labour Officer Chamba. He further alleges that despite of availability of sufficient work with the respondent department his services were illegally terminated and he was not allowed to continue without any breaks. It is alleged that respondent department has violated the principle of 'last come first go'. He has also mentioned the name of various workmen who had either been appointed along-with him or after his appointment and are still working continuously with the department. If the services of the petitioner were not terminated he would have completed eight years of continuous service on 31.12.2004 and become entitled for work-charge status/regularization of services *w.e.f.* 1.1.2005 as per common judgment of Hon'ble High Court of H.P. in CWP No. 2735 of 2010 decided on 28.7.2010 titled as Rakesh Kumar vs. State of HP. The petitioner has prayed that respondent be directed to reinstate the petitioner in his services *w.e.f.* June, 2009 along-with seniority including continuity in service and he be also held entitled for back wages and continuity of service for the period of breaks given to him by the respondent. He has further submitted that the order of termination/retrenchment of the services of the petitioner passed by the respondent department may be declared to be illegal, arbitrary and highly unjustified.

3. In reply to the claim petition the respondent raised preliminary objections qua maintainability and petition being bad on account of delay and laches. On merits, it is asserted that petitioner had been engaged in Pangi Range Forest Division on muster roll on daily rated basis not in the Killar Range in 1993. It is further submitted that the petitioner worked intermittently till 2009 and left the work at his own sweet will. Moreover various forestry related works are alleged to be generally seasonal and time bound in nature. According to the respondent once plantation is raised/plants raised in nursery as per schedule of forestry operations all activities were discontinued except supervision and protection which is carried out through permanent staff. Respondent had denied that they had engaged and disengaged the services of petitioner by giving him fictional breaks. They further alleged that petitioner has left the work at his own will as such no such fictional breaks were ever given to the petitioner. It is further alleged that the petitioner worked with the respondent department as per his convenience. According to the respondent there was no violation of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 and they have not violated the principle of 'last come first go'. It is again asserted that petitioner left the work at his own sweet will in 2009 and thereafter raised demand notice in the year 2012 i.e. after almost three years without any explanation on the part of the petitioner. It is asserted that the services of the petitioner could not be considered towards regularization due to the reason he has not completed seven years continuously with minimum 160 days of work in a calendar year. The names of the persons mentioned in the claim petition are of the persons who were senior to the petitioner. Other averments made in the petition are denied and it is prayed that the petition deserves to be dismissed.

4. The petitioner by way of rejoinder has denied preliminary objections raised in the reply facts stated in the petition are reaffirmed and reasserted.

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

1. Whether termination of services of the petitioner by the respondent during June, 2009 is/was illegal and unjustified as alleged? ...OPR

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

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

4. Whether the claim petition is bad on the ground of delay and laches as alleged? ...OPR

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. He has also tendered in evidence copy of list of daily wage labour Ext. PW1/B and copy of mandays chart Ext. PW1/C. The petitioner has also produced on record information under RTI regarding engagement and regularization of workers Ext. PX.

7. Respondent has examined Shri Sachin Sharma, Divisional Forest Officer, Pangi Forest Division, Killar by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply and also produced in evidence copy of mandays chart of petitioner Ext. RW1/B.

8. I have heard the learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

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

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

REASONS FOR FINDINGS

ISSUE No. 1

10. The petitioner has stated on oath that he was engaged on muster roll on daily wage basis as a beldar and even sometimes on bill basis without any appointment letter since the year 1997. He also alleged that he has worked intermittently till 2009 and he was not allowed to complete 160 days in each calendar year which was essential for regularization purpose. He also alleged that the breaks which were intentionally given by the respondent in his services have to be counted for the purpose of continuous service and also for the purpose of calculation of 160 days in view of Section 25-B of the Industrial Disputes Act, 1947. On contrary it is the case of the respondent that petitioner was merely engaged as a daily waged majdoor in Purthi range of Pangi Forest Division and was engaged in 1993. The petitioner however worked intermittently with the respondent till May, 2009 and he never completed 160 days in any calendar year. It is specific case of the case of the respondent that petitioner was not terminated from service but he left the service out of his own sweet will. Thus there was no violation of the provisions of the Industrial Disputes Act, 1947. It is also asserted by the respondent that they have never given any fictional breaks to the petitioner as work of the department was seasonal in nature. Neither any junior to petitioner was engaged or regularized by the respondent. The petitioner in his cross-examination has denied that he has left the service out of his own free will. He has also denied that the work of forest department is seasonal and time bound in nature. It is however admitted that after the work of plantation supervision and protection of the plants continues with the department throughout the year. Though, he admitted that he has not complied with the criteria of 160 days. However, he has denied that from 1993 to 2009 he had worked only intermittently and left the work of his own

sweet will. He has asserted that he has worked continuously. RW1 Shri Sachin Sharma has admitted in his cross-examination that no notice was ever served upon the petitioner by the department. He has asserted that the work of department is seasonal in nature since the funds are exhausted and work is completed the employment comes to an end. He has admitted that workmen engaged with the petitioner and after engagement of the petitioner were regularized with the passage of time. It however asserted by him that these workers were regularized who were continuous in service. It is argued by the learned counsel for the petitioner that intermittent nature of the work alleged to have been done by the petitioner was not due to the act and conduct of the petitioner. Learned counsel has relied upon the ratio laid down by the Hon'ble High Court of H.P. in **State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286** held in paras no. 10, 11 and 13 as follows:

> "10. Indisputably, the workman was engaged as a daily waged beldar on 21.06.1987 and he, with frictional breaks, worked upto 11.12.2000. As per the petitioners, the workman himself abandoned the job. It is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. The workman did fails to report for duty does not in any way raise a presumption that the workman himself left the job. Admittedly, while analyzing the statement of RW-1, it is manifest that no notice was served upon the petitioner asking him to resume duties. Even if, it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman, but there is no evidence which reveals that the employer ever conducted any disciplinary inquiry. Therefore, the plea of willful absence, unestablished.
>
> 11. It has also come on record that fresh hands were engaged by the employer without affording opportunity to the workman. The seniority list, Ex. RW-1/B, if read in conjunction with statement of RW-1, clearly demonstrates that persons junior to the workman are serving with the petitioners, which is in defiance to the principle of 'last go first come'. Therefore, provisions of Sections 25-G and 25-H of the Act have been contravened and it is not obligatory for the workman to have completed 240 days in a block of 12 calendar months preceding termination to derive the benefit under these sections of the Act. As per the petitioners, Section 25-F of the Act, is not applicable as the workman did not complete 240 days in cumulative period of 12 calendar months preceding his termination.
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> 13. In view of the above stated facts it is held that award of learned Presiding Judge Labour Court-*cum*-Industrial Tribunal Dharamshala in reference No. 15 of 2010, decided on 13.09.2012, is in accordance with proved facts and is in accordance with law. It is further held that there is no illegality in award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal, Dharamshala. Therefore, the writ petition is without any basis, requires dismissal and is accordingly dismissed. No order as to costs. All pending application(s), if any, also stand(s) disposed of".

11. Learned Counsel has vehemently argued that the respondent has failed to produce any notice or any disciplinary action pursuant to such notice which would point towards the wilful abandonment of the work by the petitioner. The respondent has also not produced any notification in order to prove that work for which the petitioner was engaged was only seasonal or temporary work. It is admitted by the respondent that they have given continuous work to the workmen who were engaged along-with the petitioner and also the workmen who were engaged after his engagement. It is clearly implies that respondent has intentionally provided intermittent breaks to the petitioner with a view to not to allow him to complete 160 days of continuous service in every year so as to disentile him from the benefits of regularization. The mandays chart Ext. PX which is

the information under RTI with regard to the workers who have been engaged and regularized in the Forest Division Pangi also shows that workers who were appointed in the year 1997 and also the juniors have been regularized subsequently by the department. This document as well as the statement made by RW1 Shri Sachin Sharma clearly defeat the case of respondent regarding only the seasonal nature of work being available with the department. No credible reason has been stated by the respondent which would lead this court to plea that there was not enough work available for the petitioner during the period his services were taken by the respondent department. Similarly in the absence of any notice or subsequent disciplinary action requiring the petitioner to join his work with the respondent it cannot be presumed that petitioner has left service out of his own free will. It is also clear from the case file that the respondent has failed to comply with the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act. Consequently the issue no. 1 is decided in the favour of the petitioner.

Issue No. 2

12. It is proved to the satisfaction of this court that petitioner had worked with respondent department from the year 1993 till the year 2009. The mandays chart which have been reflected in Ext. RW1/B do not clearly show the actual work done by the petitioner. In fact it is well established that the respondent has failed to provide the work to the petitioner in a continuous manner and intentionally gave him intermittent breaks with a view to prevent him from completing 160 days in each calendar year of his engagement with the respondent. It is also proved that the petitioner has not left the work of his own free will. Accordingly the termination of the petitioner by the respondent *w.e.f.* June, 2009 is declared to be illegal termination. The respondent is also liable to reinstate the services of the petitioner along-with seniority and continuity in service from June, 2009. The respondent is also directed to count period of employment from 2003 to 2009 for continuity of service of the petitioner for the purpose of regularization. In lieu of back wages the respondent is directed to pay compensation of Rs. 1,00,000/- to the petitioner along-with all consequential benefits as per policy of the State Government. Hence, issue no.2 is decided in the favour of petitioner.

Issues No. 3 and 4

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

14. The onus of proving these issues was on the respondent. The main contention of respondent is that the petitioner has not completed 160 days of service in a calendar year in order to calculate the continuous service from the year 1993 to year 2009. The contrary facts have emerged and it is proved that the respondent has provided intermittent breaks to the petitioner and he was not allowed to continue his service due to the act and conduct of the respondent. The petitioner has clearly pleaded that he had time and again approached the respondent with his request to set aside illegal termination and provide continuous service which was not accepted by the respondent. In these circumstances the delay of three years in raising a dispute with the appropriate authority is liable to be condoned. It cannot be held that the claim petition was bad on account of delay and laches, hence issues no. 3 and 4 are decided in the favour of the petitioner.

RELIEF

15. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioner along-with seniority and continuity in service. The respondent is also directed to count period of intermittent breaks in continuity of service of the petitioner for the purpose of regularization. In lieu of back

wages the respondent is directed to pay compensation of Rs. 1,00,000/- to the petitioner along-with all consequential benefits as per policy of the State Government. Parties are left to bear their costs.

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

Announced in the open Court today, this 25th day of October, 2024.

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

CHANGE OF NAME

I, Veena Sharma w/o Sh. Ram Bhushan Sharma, r/o Amarpuri, P.O. & Tehsil Dehra, Kangra (H.P.) do hereby declare that in Aadhar & PAN Card my name is Veena Sharma. But in old Voter Card my name is recorded Bina Sharma. My name may be considered as Veena Sharma.

VEENA SHARMA
w/o Sh. Ram Bhushan Sharma,
r/o Amarpuri, P.O. & Tehsil Dehra, Kangra (H.P.).

CHANGE OF NAME

I, Jaya Shri w/o Late Sh. Hemant Kumar, r/o H. No. 7, Ward No. 9, Bangla Mohalla Mandi, Tehsil Sadar, District Mandi (H.P.) have changed my name from Jaya Shri to Jaishree Kapoor. Concerned please note.

JAYA SHRI
w/o Late Sh. Hemant Kumar,
r/o H. No. 7, Ward No. 9,
Bangla Mohalla Mandi,
Tehsil Sadar, District Mandi (H.P.).

CHANGE OF NAME

I, Parmeel Kumar s/o Sh. Beli Ram, r/o Village Bhatoli, P.O. Malyawar, Tehsil Ghumarwin, District Bilaspur (H.P.) declare that I have changed my minor daughter's name from Shreya Chandel to Shreyanshi for all purposes in future. Please note.

PARMEEL KUMAR
s/o Sh. Beli Ram,
r/o Village Bhatoli, P.O. Malyawar,
Tehsil Ghumarwin, District Bilaspur (H.P.).

CHANGE OF NAME

I, Seema Sharma w/o Sh. Rajesh Sharma, r/o House No. 98, Ward No. 5, Manu Market Manali, Tehsil Manali, District Kullu (H.P.) declare that my name wrongly entered as Seema Sharma Bhardwaj instead of Seema Sharma in my son Vighnesh Sharma's +2 Certificate. Concerned note it.

SEEMA SHARMA
w/o Sh. Rajesh Sharma,
r/o House No. 98, Ward No. 5,
Manu Market Manali, Tehsil Manali, District Kullu (H.P.).

CHANGE OF NAME

I, Ravi Varma Hari Varma s/o Sh. Konnasseri Parameswaran Ravi, r/o C7 S1, South Campus Indian Institute of Technology Mandi, Kamand, District Mandi (H.P.) declare that I have changed my name from Ravi Varma Hari Varma to Hari Varma Ravi. Concerned note.

RAVI VARMA HARI VARMA
s/o Sh. Konnasseri Parameswaran Ravi,
r/o C7 S1, South Campus,
Indian Institute of Technology Mandi,
Kamand, District Mandi (H.P.).

CHANGE OF NAME

I, Kanchan Bala (31) w/o Sh. Anil Kumar, r/o Village Upperli Majhetly, P.O. Pathiar, Tehsil Nagrota Bagwan, District Kangra (H.P.) declare that my son's name has wrongly been entered as Dhyansh instead of Vinayak in his Aadhar Card. Hence Vinayak and Dhyansh is one and the same person.

KANCHAN BALA
w/o Sh. Anil Kumar,
r/o Village Upperli Majhetly, P.O. Pathiar,
Tehsil Nagrota Bagwan, District Kangra (H.P.).

CHANGE OF NAME

I, Ramesh Chand s/o Sh. Rattan Chand, r/o Village Bhirgarh, P.O. Kiar, Tehsil Theog, District Shimla (H.P.) declare that I have changed my minor daughter's name from Angel (Previous Name) to Anjal (New Name). All concerned please may notice.

RAMESH CHAND
s/o Sh. Rattan Chand,
r/o Village Bhirgarh, P.O. Kiar,
Tehsil Theog, District Shimla (H.P.).

नाम परिवर्तन

मैं, हीरा सिंह (40) पुत्र सही राम, निवासी गांव शराड, डा0 धार चांदना, तहसील कुपवी, जिला शिमला (हि0प्र0) घोषणा करता हूं कि मेरे पुत्र अक्षय का नाम स्कूल रिकार्ड में अक्षय सामटा है लेकिन पंचायत रिकार्ड व जन्म प्रमाण–पत्र में उसका नाम अक्षय ही दर्ज है। मैं अपने पुत्र का नाम सभी उद्देश्यों के लिए अक्षय सामटा करना चाहता हूं।

हीरा सिंह
पुत्र सही राम,
निवासी गांव शराड, डा0 धार चांदना,
तहसील कुपवी, जिला शिमला (हि0प्र0)।

CORRECTION OF NAME

I, Ramana Kumari aged 42 years w/o Sh. Anil Rana, r/o Village Gurehar, P.O. Digger, Tehsil Jawalamukhi, District Kangra (H.P.) declare that in my Aadhar Card my name is wrongly mentioned as Kum Ramana. That as per Himachali Bonafide & Gram Panchayat record my correct name is Ramana Kumari. Note it all concerned.

RAMANA KUMARI
w/o Sh. Anil Rana,
r/o Village Gurehar, P.O. Digger,
Tehsil Jawalamukhi, District Kangra (H.P.).

CORRECTION OF NAME

I, Vipin age 20 years s/o Sh. Atma Ram, Village Kathar, P.O. Jaon, Tehsil Anni, District Kullu (H.P.) declare that my name is correctly recorded as Vipin in School, Panchayat and other records, whereas my name is wrongly recorded as Bipan in my Aadhar Card. Please correct it and make my correct name as Vipin. All concerned please note.

VIPIN
s/o Sh. Atma Ram,
Village Kathar, P.O. Jaon,
Tehsil Anni, District Kullu (H.P.).

CHANGE OF NAME

I, Banti Ram Thakur s/o Sh. Amar Singh, r/o Village Bahri, P.O. Kot, Tehsil Dharampur, District Mandi (H.P.) declare that I have changed my minor son's name from Aadarsh Kumar to Aarush Thakur for all purposes in future. Please note.

BANTI RAM THAKUR
s/o Sh. Amar Singh,
r/o Village Bahri, P.O. Kot,
Tehsil Dharampur, District Mandi (H.P.).

नाम दुरुस्ती

मैं, जसवंत सिंह पुत्र श्री बालकिशन, निवासी सेर बड़ोन, डा0 पंजाहल, तहसील नाहन, जिला सिरमौर (हि0प्र0) घोषणा करता हूं कि स्कूल रिकार्ड अनुसार मेरे बेटे का सही नाम सौरभ (Saurabh) है। परंतु आधार कार्ड नं0 6595 4576 8018 में गलती से सौरव (Saurav) दर्ज है जोकि गलत है। इसलिए इसे सौरव (Saurav) से सौरभ (Saurabh) सही नाम दुरुस्त किया जाए। संबन्धित नोट करें।

जसवंत सिंह
पुत्र श्री बालकिशन,
निवासी सेर बड़ोन, डा0 पंजाहल,
तहसील नाहन, जिला सिरमौर (हि0प्र0)।

नाम दुरुस्ती

मैं, जसवंत सिंह पुत्र श्री बालकिशन, निवासी सेर बड़ोन, डा0 पंजाहल, तहसील नाहन, जिला सिरमौर (हि0प्र0) घोषणा करता हूं कि स्कूल रिकार्ड अनुसार मेरे बेटे का सही नाम नैतिक है। परंतु आधार कार्ड नं0 3463 8814 7700 में गलती से नितिक (Nitik) दर्ज है जोकि गलत है। इसलिए इसे नितिक (Nitik) से नैतिक (Naitik) सही नाम दुरुस्त किया जाए। संबन्धित नोट करें।

जसवंत सिंह
पुत्र श्री बालकिशन,
निवासी सेर बड़ोन, डा0 पंजाहल,
तहसील नाहन, जिला सिरमौर (हि0प्र0)।

CHANGE OF NAME

I, Shankar Thapa s/o Sh. Ram Bahadur Thapa, r/o Village Sholtu, P.O. Tapri, Sub-Tehsil Tapri, District Kinnaur (H.P.) declare that in my daughter Sandhya's Matriculation Certificate Roll No. 17279626, years March, 2024 CBSE Board, I have changed her name from Sandhya to Sandhya Thapa, father's name from Shankar to Shankar Thapa and Mother's name from Kiran to Kiran Thapa. All concerned please may note.

SHANKAR THAPA
s/o Sh. Ram Bahadur Thapa,
r/o Village Sholtu, P.O. Tapri,
Sub-Tehsil Tapri, District Kinnaur (H.P.).

CHANGE OF NAME

I, Urmila *alias* Uma Devi w/o Sh. Manjesh Kumar, r/o Village Dandoli Khera, P.O. Chilkana, Block Sarsawan, District Saharanpur (U.P.) present address r/o Village and P.O. Saroa, Tehsil Chachyot, District Mandi (H.P.) declare that I have changed my name from Urmila to Uma Devi. Concerned note.

Urmila *alias* Uma Devi
w/o Sh. Manjesh Kumar
r/o Village and P.O. Saroa,
Tehsil Chachyot, District Mandi (H.P.).

CHANGE OF NAME

I, Vipan Kumar s/o Sh. Hardayal Singh, r/o Village Jolplakhin, P.O. Kuthers, Tehsil Ghumarwin, District Bilaspur (H.P.) declare that my son name wringly entered as Akul Thakur in Aadhar Card No. 3013 7808 4242. Instead correct name is Riyansh Kumar in G.P. Kuthera. All concerned note.

VIPAN KUMAR
s/o Sh. Hardayal Singh,
r/o Village Jolplakhin, P.O. Kuthers,
Tehsil Ghumarwin, District Bilaspur (H.P.).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध हैए वम् ऑनलाइन सत्यापित किया जा सकता है।