राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 07 मई, 2025 / 17 वैशाख, 1947

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171002, the 7th February, 2025

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

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

Sl. No.	Case No.	Petitioner	Respondent	Date of award/Order
1.	Ref. 97/2016	Sh. Hari Ram	The XEN, IPH Chaura Maidan & Ors.	01.04.2024
2.	Ref. 15/2017	Sh. Rajinder Kumar	The XEN, IPH Chaura Maidan & Ors.	01.04.2024
3.	Ref. 98/2023	Sh. Rajinder Kumar	M/s Edelman Packaging (P) Ltd.	01.04.2024
4.	Ref. 52/2023	Sh. Rakesh Kumar	G.M. Integrated Kashang HEP, HPPCL.	01.04.2024
5.	Ref. 34/2023	Sh. Lalu Prasad Singh	M/s Ashirwad Print O Pack (P) Ltd.	02.04.2024
6.	Ref. 39/2019	Sh. Bavinder Singh	Dr. Y.S. Parmar university, Nauni.	03.04.2024
7.	Ref. 17/2019	Smt. Daya Sharma	M/s ISED (P) ITI	04.04.2024
8.	Ref. 102/2023	Ms. Shikha	M/s ETHIX Healthcare	05.04.2024
9.	Ref. 50/2020	Sh. Sunil Suman	Chief Ex. Officer, Shimla Sanatorium.	05.04.2024
10.	Ref. 83/2023	Sh. Pradeep Chand	Mst Sneha Aggarwal CM Apparel.	05.04.2024
11.	App. 319/2022	Sh. Shiv Ram	Principal St. Bedes College, Nav Bahar.	05.04.2024
12.	App. 320/2022	Sh. Beersai Kujur	Principal St. Bedes College, Nav Bahar.	05.04.2024
13.	App. 321/2022	Sh. Harvinder Krishan	Principal St. Bedes College, Nav Bahar.	05.04.2024
14.	App. 322/2022	Sh. Ishwar Dass	Principal St. Bedes College, Nav Bahar.	05.04.2024
15.	App. 323/2022	Sh. Vishwanath Oran	Principal St. Bedes College, Nav Bahar.	05.04.2024
16.	App. 324/2022	Sh. Niram Dass	Principal St. Bedes College, Nav Bahar.	05.04.2024
17.	App. 325/2022	Sh. Kuldeep Eka	Principal St. Bedes College, Nav Bahar.	05.04.2024
18.	Ref. 80/2023	Sh. Sandeep Kumar	M/s Johnson & Johnson Ltd.	10.04.2024
19.	Ref. 32/2023	Sh. Rimpu Dhiman	M/s Johnson & Johnson Ltd.	10.04.2024
20.	Ref. 20/2023	Sh. Pawan Thakur	M/s Regal Kitchen Foods Ltd.	26.04.2024
21.	Ref. 33/2023	Sh. Sunil Kumar	M/s Scott Edil Pharmacia	26.04.2024
22.	Ref. 36/2023	Sh. Ram Kumar	M/s Dycott Healthcare Industries.	26.04.2024
23.	Ref. 15/2023	Sh. Rajinder Kumar	M/s Superhoze Industries Ltd.	26.04.2024

24.	Ref. 122/2023	Sh. Kartar Singh	M/s Sarvotham Remedies Ltd.	29.04.2024
25.	Ref. 102/2019	Sh. Dalip Kumar	M/s Optima Industries, Parwanoo.	29.04.2024
26.	Ref. 103/2019	Sh. Chetan Dev	M/s Optima Industries, Parwanoo.	29.04.2024
27.	Ref. 104/2019	Sh. Lachhi Ram	M/s Optima Industries, Parwanoo.	29.04.2024
28.	App. 151/2020	Sh. Jarnail Singh	Issolloyed Engineering Technologies Ltd.	30.04.2024
29.	App. 02/2021	Sh. Rakesh Kumar	Issolloyed Engineering Technologies Ltd.	30.04.2024

By order,

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

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

Reference No. : 97 of 2016

Date of Institution : 06.10.2016

Date of Decision : 01.04.2024

Hari Ram s/o Shri Prabhu Ram, r/o Village Rajina, P.O. Jobri, Tehsil Arki, District Solan, H.P. . . *Petitioner*.

Versus

1. The Executive Engineer, IPH Division No. 2, Chaura Maidan, Shimla.

2. Greater Shimla, Water Supply and Sewerage Circle, M.C. Shimla.

3. Shri Jal Prabandhan through its MD/Superintendent Engineer, Municipal Corporation, Shimla.

4. Jal Shakti Vibhag, Kasumpati Shimla, 171009 . . *Respondents*.

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

For the Petitioner : Shri Praveen Chauhan, Adv.

For the Respondents No. 1 & 4: : Sh. Manoj Sharma, A.D.A.

For the Respondent No. 2 : Sh. Surender Chauhan, Adv.

For the Respondent No. 3 : Sh. Vijay Thakur, Adv.

AWARD

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

"**Whether alleged termination of services of Shri Hari Ram s/o Shri Prabhu Ram, r/o Village Rajina, P.O. Jobri, Tehsil Arki, District Solan, H.P. during May, 2006 by the Executive Engineer, IPH Division No. 2, Shimla-3, who had worked for 31 days and 142 days during the years 2005 and 2006 respectively and has raised his industrial dispute after about 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 31 days and 142 days during the years 2005 & 2006 respectively and delay of 7 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?**"

2. The case of the petitioner as it emerges from the statement of claim is that initially in the month of December, 2005, he had been engaged as a daily waged beldar in I & PH Division No. 2, Shimla. He had worked as such continuously till 31.12.2006 and had completed more than 240 days in each calendar year, but his services had been terminated on account of non-availability of work without issuing any notice under Section 25-N of the Act. His juniors, namely, Kewal Ram, Roshan Lal and Harvinder Singh are still working with the department, whereas his services had been terminated orally, which is in violation of the provisions of Sections 25-G and 25-H of the Act. He raised an industrial dispute, which led to the present reference.

3. Initially, as per the reference there was only one respondent*, i.e.* the present respondent No.1. However, subsequently on filing of applications for impleadment of new respondents, the other respondents were impeaded as party to the lis. Amended claim petition was filed. On notice, all the respondents appeared. Respondent No. 2 and respondent No. 3 filed separate replies, whereas respondents No.1 & 4 adopted the reply filed by respondent no. 2, as per the separate statement of the learned Additional District Attorney recorded and placed on the file.

4. Respondent No. 2 filed the reply taking preliminary objection regarding lack of maintainability and abandonment. On merits, it is alleged that the petitioner was engaged on 01.12.2005 in the Public Health, Sub Division Dhalli on daily wage basis. He had left the job of his own on 22.05.2006. He had only worked for 31 days in the year 2005 and for 142 days in the year 2006. It is specifically denied that the service of the petitioner had been terminated. The question of the violation of the provisions of Sections 25-F, 25-G and 25-H does not arise. The petitioner cannot be equated with other daily waged workers, who had continuously worked with the respondent and had been regularized as per the policy of the Government. No fresh hands had been engaged. Hence, it is prayed that the claim petition be dismissed.

5. By filing separate reply, respondent no.3 has taken preliminary objection regarding lack of relationship of employer and employee between him and the petitioner. It is alleged on merits that the petitioner himself admits of he being appointed in the I&PH Department in the year 2005. No services have ever been provided by the petitioner to the respondent, after the formation

of the company. There exists no cause of action against this respondent under the Act. On the signing of MOU in the year 2016 in between the I&PH Department and the Municipal Corporation Shimla, the Water Supply and Sewerage Circle Shimla and IPH Division No.2 were transferred to Municipal Corporation, Shimla. Vide a resolution passed in the year 2018, the Municipal Corporation, Shimla had handed over the Water and Sewerage Services to the respondent. No employees working in the Division were either taken by the Municipal Corporation Shimla or by the respondent. All the employees are working on secondment basis with the respondent and their controlling authority is Executive Engineer, I&PH Department, now known as Jal Shakti Vibhag. Hence, it is prayed that the claim petition be dismissed.

6. While filing the rejoinder, the petitioner controverted the averments made in the reply filed by respondent no.2 and reiterated those in the statement of claim.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 23.04.2018.

1. Whether the termination of the petitioner by the respondents during May, 2006 without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified, as alleged? . . *OPP*.

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

3. Whether the petition is hit by delay and latches, as alleged? . . *OPR*.

4. Relief

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

9. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No.1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	Negative
Relief	:	Reference is answered in the negative, as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

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

12. In support of his case, the petitioner examined himself as PW-1 and tendered in evidence his affidavit Ex. PW-2/A, wherein he reiterated almost all the averments as made in the claim petition.

13. In the cross-examination, he denied that he had left the job of his own on 22.05.2006. He also denied that no junior to him has been retained and that the department had not violated any of the provisions of the Act.

14. Conversely, respondents No. 1 & 4 examined Shri Kamal Raj Kapil as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A, being in the shape of examination-in-chief. He also tendered in evidence the authority letter as Ex. RW-1/B and the mandays chart as Ex. RW-1/C.

15. In the cross-examination, he denied that the petitioner had worked for 240 days in each calendar year. He also denied that Shri Kewal Ram, Shri Roshan Lal and Shri Ravinder Singh were engaged after the alleged termination of the services of the petitioner.

16. Respondent no.3 examined Shri Sushil Kumar Sharma as RW-2, who tendered in evidence his affidavit Ex, RW-2/A, whereby he corroborated on oath the averments made in the reply by the respondent no.3. He also tendered in evidence the authority letter as Ex. RW-2/B and letter as Mark R-1.

17. In the cross-examination on behalf of the petitioner, he denied that the staff of I&PH had been merged/absorbed in SJPNL. Volunteered that, they were on secondment basis. The mandays chart produced on record may be correct, as it has been signed by the XEN. He feigned ignorance that the petitioner had worked for more days than reflected in the mandays chart.

18. Admittedly, the petitioner was employed as a daily waged beldar by the department in December, 2005. The petitioner has tried to portray that his services had orally and illegally been terminated by the respondent-department on 31.12.2006, whereas as per the reference the services of the petitioner are stated to have been terminated by respondent no.1 during the month of May, 2006. The stand taken by respondent no.2 on the other hand is that the services of the petitioner had never been terminated, rather he had abandoned the job on 22.05.2006.

19. So, the question which first and foremost arises for determination is as to whether in the month of May, 2006, the services of the petitioner were finally terminated by the respondent(s) or not?

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during the month of May, 2006. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent(s) on 31.12.2006. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent(s) on 31.12.2006. Such

pleadings and evidence of the petitioner cannot be looked into, being beyond the terms of the reference. Since, it has neither been pleaded nor stated by the petitioner that his services stood terminated by the respondent in the month of May, 2006, therefore, the question of final termination of his services by the respondent(s) (as per the reference) does not arise. Rather, the same has become insignificant.

21. Such being the situation, I have no hesitation to conclude that the services of the petitioner were not finally terminated by the department in the month of May, 2006.

22. Even otherwise, Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B 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 for 240 days, 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 the 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.

23. 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 alleged termination. The petitioner has failed to establish by leading cogent and satisfactory evidence on record that he had completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, as envisaged under Section 25-B of the Act. Moreover, the respondent(s) has placed on record the mandays chart of the petitioner as Ex. RW-1/C. The mandays chart appears to have not been disputed by the petitioner, as it was nowhere suggested to RW-1 Shri Kamal Raj Kapil, who produced the document, that the same did not depict the factual and correct position. Looking to the mandays chart, it clearly shows that the petitioner had worked only for 31 days in December, 2005 and for 142 days from the month of January, 2006 till the month of May, 2006. Manifest from the aforesaid mandays chart, the petitioner had not completed 240 working days in a block of 12 calendar months preceding his alleged termination. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Both, Section 25-F and Section 25-N of the Act provide for continuous service for not less than one year under an employer. Therefore, the provisions of Section 25-N of the Act are not attracted in this case.

24. The principle of "last come first go" is envisaged under Section 25G 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".*

25. The petitioner claimed in the statement of claim and also in his statement recorded on oath before this Court that persons junior to him, namely, Kewal Ram, Roshan Lal and Harvinder Singh are still working with the respondent(s). However, the statement of claim and the sole testimony of the petitioner are not supported by any other ocular or documentary evidence on record. No seniority list of daily waged beldars has been placed and exhibited on record by the petitioner to show that the aforesaid persons, being junior to him, were still serving the respondent(s)/employer(s). Even, no other witness has stepped into the dock to say that persons junior to the petitioner were still serving the department. Therefore, it cannot be held that the respondents have violated the provisions of Section 25-G of the Act.

26. The petitioner's allegation that the respondents had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondents after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondents after his alleged termination. The testimony of the petitioner is also silent in this regard. The material on record, thus, being too scanty and nebulous to lend assurance to the allegations of the petitioner that new workers were appointed after the termination of his services, the respondents cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

27. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issues no.1 & 2 are decided in the negative and against the petitioner.

Issue No. 3

28. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

29. In view of the aforesaid binding precedent, it cannot be said that the petition is not maintainable due to delay and laches. The issue in question is decided in the negative and against the respondents.

Relief

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

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

Reference No. : 15 of 2017

Date of Institution : 09.01.2017

Date of Decision : 01.04.2024

Rajinder Kumar s/o Shri Baldev Ram, r/o Village Sawawa, P.O. Jobri, Tehsil Arki, District Solan, H.P. . . *Petitioner*.

Versus

1. The Executive Engineer, IPH Division No.2, Chaura Maidan, Shimla.

2. Greater Shimla, Water Supply and Sewerage Circle, M.C Shimla.

3. Shri Jal Prabandhan through its MD/Superintendent Engineer, Municipal Corporation, Shimla.

4. Jal Shakti Vibhag, Kasumpati Shimla, 171009 . . *Respondents*.

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

For the Petitioner : Shri Praveen Chauhan, Adv.

For the Respondents No. 1 & 4: : Sh. Manoj Sharma, A.D.A.

For the Respondent No.2 : Sh. Surender Chauhan, Adv.

For the Respondent No.3 : Sh. Vijay Thakur, Adv.

AWARD

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

"**Whether alleged termination of services of Shri Rajinder Kumar s/o Shri Baldev Ram, r/o Village Sawawa, P.O. Jobri, Tehsil Arki, District Solan, H.P. during March, 2006 by the Executive Engineer, IPH Division No.2, Chaura Maidan, Shimla-4, who**

had worked for 47 days only during 2006 and raised his industrial dispute after about 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of 7 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?"

2. The case of the petitioner as it emerges from the statement of claim is that initially in the month of January, 2006, he had been engaged as a daily waged beldar in I&PH Section Kasumpati, Shimla. He had worked as such continuously till 31.12.2006 and had completed more than 240 days in each calendar year, but his services had been terminated on account of non-availability of work without issuing any notice under Section 25-N of the Act. His juniors, namely, Kewal Ram, Roshan Lal and Harvinder Singh are still working with the department, whereas his services had been terminated orally, which is in violation of the provisions of Sections 25-G and 25-H of the Act. He raised an industrial dispute, which led to the present reference.

3. Initially, as per the reference there was only one respondent, *i.e.* the present respondent No.1. However, subsequently on filing of applications for impleadment of new respondents, the other respondents were impeaded as party to the lis. Amended claim petition was filed. On notice, all the respondents appeared. Respondent No.2 and respondent No.3 filed separate replies, whereas respondents No.1 & 4 adopted the reply filed by respondent no.2, as per the separate statement of the learned Additional District Attorney recorded and placed on the file.

4. Respondent No.2 filed the reply taking preliminary objections regarding delay and laches and abandonment. On merits, it is alleged that the petitioner was engaged as daily waged beldar in the department. He had left the job of his own It is specifically denied that the service of the petitioner had been terminated and the respondent department had violated the relevant provisions of the Act. Hence, it is prayed that the claim petition be dismissed.

5. By filing separate reply, respondent no.3 has taken preliminary objection regarding lack of relationship of employer and employee between him and the petitioner. It is alleged on merits that the petitioner himself admits of he being appointed in the I&PH Department in the year 2006. No services have ever been provided by the petitioner to the respondent, after the formation of the company. There exists no cause of action against this respondent under the Act. On the signing of MOU in the year 2016 in between the I&PH Department and the Municipal Corporation Shimla, the Water Supply and Sewerage Circle Shimla and IPH Division No.2 were transferred to Municipal Corporation, Shimla. Vide a resolution passed in the year 2018, the Municipal Corporation, Shimla had handed over the Water and Sewerage Services to the respondent. No employees working in the Division were either taken by the Municipal Corporation Shimla or by the respondent. All the employees are working on secondment basis with the respondent and their controlling authority is Executive Engineer, I&PH Department, now known as Jal Shakti Vibhag. Hence, it is prayed that the claim petition be dismissed.

6. While filing the rejoinder, the petitioner controverted the averments made in the reply filed by respondent no.2 and reiterated those in the statement of claim.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, *vide* order dated 22.05.2018.

1. Whether the termination of the petitioner by the respondents during March, 2006 without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified, as alleged? . . *OPP*.

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

3. Whether the petition is hit by delay and laches, as alleged? . . *OPR*.

4. Relief

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

9. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No.1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	Negative
Relief	:	Reference is answered in the negative, as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

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

12. In support of his case, the petitioner examined himself as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition.

13. In the cross-examination, he denied that he had left the job of his own w.e.f. March, 2006. He also denied that no junior to him has been retained and that the department had not violated any of the provisions of the Act.

14. Conversely, respondents No. 1 & 4 examined Shri Kamal Raj Kapil as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A, being in the shape of examination-in-chief. He also tendered in evidence the authority letter as Ex. RW-1/B and the mandays chart as Ex. RW-1/C.

15. In the cross-examination, he denied that the petitioner had worked for 240 days in each calendar year. He also denied that Shri Kewal Ram, Shri Roshan Lal and Shri Harvinder Singh were engaged after the alleged termination of the services of the petitioner.

16. Respondent no.3 examined Shri Sushil Kumar Sharma as RW-2, who tendered in evidence his affidavit Ex, RW-2/A, whereby he corroborated on oath the averments made in the reply by the respondent no.3. He also tendered in evidence the authority letter as Ex. RW-2/B and letter as Mark R-1.

17. In the cross-examination on behalf of the petitioner, he denied that the staff of I&PH had been merged/absorbed in SJPNL. Volunteered that, they were on secondment basis. He denied that the service record of these persons lies with them. He admitted that no record pertaining to the petitioner lies with them.

18. Admittedly, the petitioner was employed as a daily waged beldar by the department. The petitioner has tried to portray that his services had orally and illegally been terminated by the respondents-department on 31.12.2006, whereas as per the reference the services of the petitioner are stated to have been terminated by respondent no.1 during the month of March, 2006. The stand taken by respondent no.2 on the other hand is that the services of the petitioner had never been terminated, rather he had abandoned the job.

19. So, the question which first and foremost arises for determination is as to whether in the month of March, 2006, the services of the petitioner were finally terminated by the respondent(s) or not?

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during the month of March, 2006. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent(s) on 31.12.2006. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent(s) on 31.12.2006. Such pleadings and evidence of the petitioner cannot be looked into, being beyond the terms of the reference. Since, it has neither been pleaded nor stated by the petitioner that his services stood terminated by the respondent(s) in the month of March, 2006, therefore, the question of final termination of his services by the respondent(s) (as per the reference) does not arise. Rather, the same has become insignificant.

21. Such being the situation, I have no hesitation to conclude that the services of the petitioner were not finally terminated by the department in the month of March, 2006.

22. Even otherwise, Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B 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 for 240 days, 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 the 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.

23. 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 alleged termination. The petitioner has failed to establish by leading cogent and satisfactory evidence on record that he had completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, as envisaged under Section 25-B of the Act. Moreover, the respondent(s) has placed on record the mandays chart of the petitioner as Ex. RW-1/C. The mandays chart appears to have not been disputed by the petitioner, as it was nowhere suggested to RW-1 Shri Kamal Raj Kapil, who produced the document, that the same did not depict the factual and correct position. Looking to the mandays chart, it clearly shows that the petitioner had worked only for 47 days in the months of February and March 2006. Manifest from the aforesaid mandays chart, the petitioner had not completed 240 working days in a block of 12 calendar months preceding his alleged termination. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Both, Section 25-F and Section 25-N of the Act provide for continuous service for not less than one year under an employer. Therefore, the provisions of Section 25-N of the Act are not attracted in this case.

24. The principle of "last come first go" is envisaged under Section 25G 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".*

25. The petitioner claimed in the statement of claim and also in his statement recorded on oath before this Court that persons junior to him, namely, Kewal Ram, Roshan Lal and Harvinder Singh are still working with the respondent(s). However, the statement of claim and the sole testimony of the petitioner are not supported by any other ocular or documentary evidence on record. No seniority list of daily waged beldars has been placed and exhibited on record by the petitioner to show that the aforesaid persons, being junior to him, were still serving the respondent(s)/employer(s). Even, no other witness has stepped into the dock to say that persons junior to the petitioner were still serving the department. Therefore, it cannot be held that the respondents have violated the provisions of Section 25-G of the Act.

26. The petitioner's allegation that the respondents had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondents after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondents after his alleged termination. The

testimony of the petitioner is also silent in this regard. The material on record, thus, being too scanty and nebulous to lend assurance to the allegations of the petitioner that new workers were appointed after the termination of his services, the respondents cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

27. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issues no.1 & 2 are decided in the negative and against the petitioner.

Issue No. 3

28. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

29. In view of the aforesaid binding precedent, it cannot be said that the petition is not maintainable due to delay and laches. The issue in question is decided in the negative and against the respondents.

Relief

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	98 of 2023
Instituted on	:	03.07.2023
Decided on	:	01.04.2024

Rajinder Kumar s/o Shri Tara Chand, r/o Village Haripur, P.O. Surajpur, Baddi, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager M/s Edelman Packaging Pvt. Ltd., Village Surajpur, Haripur Road, Barotiwala, Tehsil Baddi, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Sh. Prateek Kumar, Adv.

AWARD

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

"Whether the termination of services of Shri Rajinder Kumar s/o Shri Tara Chand, r/o Village Haripur, P.O. Surajpur, Baddi, District Solan, H.P. by the factory manager, M/S Edelman Packaging Pvt. Ltd., Village Surajpur, Haripur Road, Barotiwala, Tehsil Baddi, District Solan, H.P. w.e.f. 19.10.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from, the above management?"

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 19.10.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 01st day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 52 of 2023

Instituted on : 03.03.2023

Decided on : 01.04.2024

Rakesh Kumar s/o Shri Karam Singh, Presently residing at Reckong Peo (Near ITI) Tehsil Kalpa, District Kinnaur, H.P. . . *Petitioner*.

Versus

The General Manager, Integrated Kashang HEP, HPPCL, Reckong Peo Kinnaur, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Sh. Prateek Kumar, Adv.

AWARD

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

"Whether the termination of services of Shri Rakesh Kumar s/o Shri Karam Singh, Presently residing at Reckong Peo (Near ITI) Tehsil Kalpa, District Kinnaur, H.P. by the General Manager, Integrated Kashang HEP, HPPCL, Reckong Peo Kinnaur, H.P. w.e.f. 21.03.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement of the services, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from, the above employers/managements?"

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

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

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

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central

Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 21.03.2020 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 01st day of April, 2024.

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

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	34 of 2023
Instituted on	:	01.03.2023
Decided on	:	02.04.2024

Lalu Prasad Singh s/o Shri Ramashish Singh c/o Sh. Satishender Nath Bhanot, r/o Model Town Kirpalpur (Nalagarh), District Solan, H.P. . . *Petitioner*.

Versus

The Occupier M/s Ashirwad Print 'O' Pack Pvt. Ltd., Plot No. 143, EPIP Jharmajri, P.O. Barotiwala, Tehsil Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Nemo
For the Respondent	:	Nemo

AWARD

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

"Whether the termination of services of Shri Lalu Prasad Singh s/o Shri Ramashish Singh c/o Sh. Satishender Nath Bhanot, r/o Model Town Kirpalpur (Nalagarh), District Solan, H.P. by the Occupier M/S Ashirwad Print 'O' Pack Pvt. Ltd., Plot No. 143, EPIP Jharmajri, P.O. Barotiwala, Tehsil Nalagarh, District Solan H.P. w.e.f. 06.11.2021 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workman is entitled to from, the above management?"

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 06.11.2021 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 2nd day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

BEFORE YOGESH JASWAL, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	39 of 2019
Instituted on	:	15.01.2019
Decided on	:	03.04.2024

Bavinder Singh, s/o Late Shri Rikhi Ram, through Shri J.C. Bhardwaj, President H.P. AITUC, HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Complex, Solan, HP.

. . *Petitioner*.

Versus

The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, 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	:	Ex-parte

AWARD

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

"**Whether termination of the services of Shri Bavinder Singh, s/o Late Shri Rikhi Ram, through Shri J.C. Bhardwaj, President HP AITUC, HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Complex, Solan, H.P. during July, 1997 to 15.10.2014 by the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, HP without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back-wages, seniority, consequential service benefits and compensation the above worker is entitled to from the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.?"**

2. The case of the petitioner, as it emerges from the statement of claim is that he had been engaged on daily wage basis during the month of July 1997 in the Silviculture and Agroforestry Department of the respondent-University and remained as such till 31.08.1998. He had completed 240 days during this period. Thereafter, in the month of September, 1998, he had been again engaged as technical assistant on monthly consolidated salary/wages in research project where he remained till 15.10.2014. During this period, he had worked in different projects. Many workmen, who are junior to him have been retained and their services have been regularized. The time and again termination of the services of the petitioner is stated to be in contravention of the provisions of Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act) and the artificial breaks as given to him do not make him a temporary workman. He had worked for 17 years continuously with the respondent. Before terminating him from service, the statutory and mandatory provisions of Sections 25-N and 25-F were not complied with, as neither any notice nor any compensation has been paid to him. The termination of the petitioner is stated to be based on surmises and conjectures, being voilative of the provisions of Sections 25-G and 25-H of the Act. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability and jurisdiction. On merits, it is alleged that the petitioner had worked as a daily paid labourer *w.e.f.* July, 1997 to December 1997 for 169 days and thereafter from January, 1998 to August, 1998 for 197 days in the department of Silviculture and Agro-Forestry of the respondent-university. He had not completed 240 days in a calendar year. Thereafter, he had applied for the post of Junior Research Fellow and was appointed as such *w.e.f.* 2.1.2002 on a fixed salary, which was co-terminus with the adhoc project vide appointment letter dated 1.1.2002. After the completion of adhoc project, he was again appointed in NATP Project for a period of six months on co-terminus basis *w.e.f.* 28.02.2004. He had tendered his resignation, which was accepted vide letter dated 31.08.2004. He was again appointed to the post of Field Investigator on a fixed salary, being co-terminus with the adhoc project Concurrent Evaluation of CSS for the Development of Horticulture under Macro Management of Horticulture w.e.f. 05.08.2004. Thereafter, *w.e.f.* 07.07.2006, he had been appointed as Field Investigator with the project, namely,

Women-a-Socio-Economic Analysis and *w.e.f.* 18.11.2008 with the Project Evaluation of Sworozar Yojna in H.P. Now, he has been engaged as a Data Investigator with the project Impact of Market Forces on the pattern of Livelihood. The services of the petitioner were governed by the terms and conditions of his appointment on different post, under different adhoc projects, being co-terminus and upto the tenure of the said projects. The provisions of the Act are not applicable. Hence, it is prayed that the petition be dismissed.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 19.02.2020:

1. Whether the termination of the petitioner w.e.f. 15.10.2014 is voilative of the provisions of Sections 25-N & 25-F of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . . *OPP*.

2. Whether the claim is not maintainable as the "university" being an educational institution does not fall within the domain of the Industrial Disputes Act, as alleged, if so, its effects thereto? . . *OPR*.

3. Whether the claim is not maintainable in the present form, as alleged, if so, its effect thereto? . . *OPR*.

4. Whether the engagement of the petitioner was for specific project and his engagement was project funded, as alleged, if so, its effect thereto? . . *OPR*.

5. Relief:

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

8. Be it recorded here that when the case was listed for arguments, the respondent did not appear and was thus proceeded against ex-parte on 18.03.2024. Arguments of the learned Authorized Representative for the petitioner heard and records gone through.

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

Issue No. 1 : Yes. Entitled to re-instatement with consequential pecuniary benefits post regularization.

Issue No. 2 : Negative

Issue No. 3 : Negative

Issue No. 4 : Negative

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

REASONS FOR FINDINGS

Issues No. 2 & 3

10. These issues regarding maintainability are taken into precedence over all the other issues, as the findings on these issues shall go to the very root of the case.

11. It was claimed by the respondent that the university being an educational institution does not fall within the ambit of the term "industry" and, therefore, the provisions of the Act are not applicable and the case as such is not maintainable. This cannot be accepted. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

> "***The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."***

12. A perusal of the above mentioned judgment of the Hon'ble Supreme Court clearly shows that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provision itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of

the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" at least for the purposes of this Act. Hence, these issues are answered in the negative and against respondent/university.

Issues No.1 & 4

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

14. The main dispute between the parties hinges upon the fact as to whether the petitioner was engaged by the university and as such continued to be its workman and as to whether the action of the respondent/university in engaging him purely on temporary contract co-terminus basis *w.e.f.* September, 1998 is legally sustainable or not?

15. It is primarily the case of the petitioner that he had been initially engaged by the university on daily wage basis and it was only in September, 1998 that his services were taken purely on temporary contract co-terminus basis in various projects and that too without any notice regarding the change in his service conditions. He had been working with the respondent university regularly, though he was given artificial breaks, but the work was of perennial nature.

16. Per contra, the stand of the respondent-university was that the petitioner earlier had worked on daily wage basis and thereafter was engaged on contractual basis under adhoc projects to do manual work, on seasonal basis and that too only for specified periods.

17. While substantiating his case, the petitioner, namely, Shri Bavinder Singh examined himself as (PW-1). Apart from tendering his affidavit by way of evidence (Ex. PW-1/A), which is nothing, but a reiteration of facts mentioned in the statement of claim, he has placed on record details of mandays chart Ex. PW-1/B, certificates of working as Ex. PW-1/C to Ex. PW-1/H & J. A seniority list of daily waged workers of the university has also been placed on record Mark PA.

18. In the cross-examination, he denied that he was engaged for fixed periods. Volunteered that, he was engaged on daily wages. He admitted that he was engaged in the projects for fixed periods. He denied that his appointment/engagement was not made by the university. He further denied that he had not completed 240 working days continuously in each calendar year.

19. The respondent-university on the other hand has merely examined one Superintendent and one Section Officer from the office of Directorate of Research UHF, as RW-1 and RW-2. They placed on record their affidavits as Ex. RW-1/A and Ex. RW-2/A, wherein they reiterated almost all the averments as made in the reply.

20. In the cross-examinations, both the witnesses have admitted that the petitioner was engaged on daily wage basis in July 1997. They also admitted that the petitioner had completed 267 days in a calendar year. They further admitted that no notice in writing was given to the petitioner while terminating his services. The petitioner was engaged in projects and had worked there till the year 2017. Volunteered that, the petitioner used to resign and then apply for new assignments after three years and his appointment was co-terminus with the project. They clearly admitted that project works are a part of the university and are perennial in nature.

21. The testimonies of the witnesses and the documentary evidence clearly go to show that the petitioner, a workman initially came to be engaged by the respondent-university on daily wages. It is not only clear from Ex. PW-1/B, which happens to be the mandays chart pertaining to the petitioner, but also from the admissions made by both the witnesses examined by the respondent that the petitioner had been engaged on daily wage basis in July, 1997. The factum that the petitioner had continuously worked for a period of one year is also corroborated by the mandays chart placed on record by the petitioner and also from the admissions made by the witnesses of the respondent, who were categorical that the petitioner had completed 267 days in a calendar year.

22. Then, a conjoint reading of Ex. PW-1/C to Ex. PW-1/H & J shows that apparently the petitioner w.e.f. September, 1998 onwards was engaged on contractual basis in various projects. He came to be engaged for various spells in different projects for specific periods and had been given fictional breaks to save the respondent/university from the process of regularization. It may well be said that the change effected by the respondent-university may be a subterfuge adopted by it to deny the legitimate claim of the petitioner, as was sought to be urged by the Authorized Representative for the petitioner.

23. Though, it was tried to be portrayed for the respondent/university that the petitioner was engaged for seasonal works, but no evidence worth the name has been led by the respondent/university to substantiate such claim. Except for the Superintendent and Section Officer, who have been examined as RW-1 and RW-2, none has appeared in the witness box. Both these witnesses nowhere deposed that the petitioner had been engaged for seasonal works. The plea of seasonal work ought to have been proved on record, but the respondent/university has miserably failed to do so. Then, RW-1 and RW-2, both were categorical in their cross-examinations that the project work was perennial in nature. It is, thus, clear that the petitioner had been working continuously and un-interruptedly with the respondent/university, even if he was engaged on contractual basis in various projects for specific periods, he had been working with the respondent/university after being given fictional breaks all along.

24. Admittedly, the services of the petitioner since September, 1998 had been taken by the respondent/university on contractual basis under various adhoc projects for specific periods.

25. What, thus, emerges from the evidence on record is that admittedly the service condition of the petitioner, who was working with the respondent/university since July, 1997 on daily wage basis came to be changed in September, 1998 on contractual basis under various adhoc projects for specific periods, which was in gross violation of the provisions of Section 9-A of Act. No notice whatsoever had been issued to the petitioner likely to be affected by such change. The respondent/university was duty bound to have followed the provisions of Section 9-A of the Act, which is otherwise mandatory in nature and any non-compliance thereto, renders any change in service condition *void-ab-intio*. The Hon'ble Supreme Court has also held so, that too as far back in the year 1997, in case titled as ***"Lokmat Newspaper Pvt. Ltd. Vs. Shankar Parsad, AIR 1999 SC 2423***". The respondent/university, thus, had to atleast issue a notice of such change to the petitioner, prior to changing his condition, which admittedly, was not done.

26. Not only is the action of the respondent/ university voilative on the aforesaid count, but it also smacks of "unfair labour practice", as defined in Section 2(ra) of the Act, as the action of the

respondent/university tantamounts to abolishing the work of a regular nature being done by the workman and to engage him on different projects. The action of the respondent/university in changing the service conditions of the workman *per se*, was not in good faith and can be termed to be malafide, as has been detailed hereinabove. The change effected by the respondent/university tantamounts to the infraction of the provisions contained in the Fifth Schedule of the Act, vis-a-vis "unfair labour practice".

27. For all the aforesaid reasons discussed hereinabove, this Court is of the considered opinion that the time to time termination of the services of the petitioner during July 1997 to 15.10.2014 by the respondent/university was indeed voilative of the provisions of the Act, as has been discussed above and, thus, illegal and unjustified in law.

28. By now, it is fairly well settled that if a workman has worked continuously and uninterruptedly as a casual or temporary employee and the same is done with the object of depriving him the status and privilege of a permanent employee and he has been doing work of a permanent nature since long and that too under the direct supervision and control of the principle employer, regularization of the said employee is well justified and is even within the four corners of law. Moreover, since it is conclusively proved on record that the respondent/university had resorted to unfair labour practice, this Court can issue preventive as well as positive directions to undo the wrong. In this behalf support can be drawn from the judgments of the Hon'ble Supreme Court titled as ***Umrala Gram Panchyat Vs. The Secretary Municipal Employees Union and Ors. 2015 LLR 449*** and ***Chennai Port Trust Vs. The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors. 2018 LLR 612.*** Therefore, the petitioner shall be entitled to regularization as per the regularization policy of the State Government applicable to similar situated daily waged workers at the relevant time.

29. Further, the petitioner shall also be entitled to consequential pecuniary benefits post regularization.

30. Issue No.1 is, thus, answered in the affirmative and in favour of the petitioner, while issue No.4 is answered in the negative and against the respondent/university.

Relief

31. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service with consequential pecuniary benefits post regularization. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

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

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE YOGESH JASWAL, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 17 of 2019

Instituted on : 02.01.2019

Decided on : 04.04.2024

Daya Sharma w/o Shri Ramesh Kumar, Village Jathot, P.O. Navgaon, Tehsil Arki, District Solan, H.P. . . *Petitioner*.

Versus

The Principal & Company Manager, M/s ISED Pvt. ITI (run by Ambuja Cement Foundation), VPO Darlaghat, Tehsil Arki, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri H.R. Bhardwaj, Advocate

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

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

> "**Whether termination of the services of Smt. Daya Sharma w/o Shri Ramesh Kumar, Village Jathot, P.O. Navgaon, Tehsil Arki, District Solan, (H.P.) who had been working as Trainer for last more than 10 years w.e.f. 14.09.2017 by the Principal & Company Manager, M/s ISED Pvt. ITI (run by Ambuja Cement Foundation), V.P.O. Darlaghat, Tehsil Arki, District Solan, HP without complying with the provisions of Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"**

2. The case of the petitioner as it emerges from the statement of claim is that she being a matriculate was engaged as Teacher-*cum*-Trainer in the ITI run by Ambuja Cement Foundation at Darlaghat *w.e.f.* 21.05.2008 for cutting and tailoring on contractual basis for a period of six months, which was renewed from time to time. Her services were orally terminated in the month of June, 2017 and thereafter no extension was given to her. She had been assured by the respondent that she would be re-engagement as and when the work and funds were available. She then had kept on waiting and after making enquiries had come to know that the respondent had the work and funds available with him, but her services were wrongfully terminated. Neither any notice under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as the Act) had been issued to her nor she had been paid the compensation. Juniors to her have been retained and some new workers have been engaged. She raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objection regarding lack of maintainability. On merits, it is admitted that the petitioner was engaged as a trainer in the institute for skill and entrepreneurship development promoted by Ambuja Cement Foundation and Punjab National Bank, Darlaghat, District Solan, HP for a fixed period. It was clarified that after the expiry of the fixed period, her services would come to an end. The petitioner had signed the extension letter, which also contained the condition that after the expiry of the extension period, her engagement would come to an end. The engagement of the petitioner as trainer was stated to be made under a scheme sponsored by ISED, and as such is covered under Section 2(oo)(bb) of the Act. Her services were not terminated, but the same had come to an end on the expiry of contract/renewal period. There has been no violation of the provisions of the Act. Since, there was insufficient strength of the students and the sponsorship of ISED, so, the respondent did not extend the engagement of the petitioner. It is denied that juniors to the petitioner have been retained and new workers engaged. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 05.11.2019:

1. Whether the termination of the petitioner w.e.f. 14.09.2017 is violative of provisions of 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged, if so, to what relief the petitioner is entitled to? . . *OPP*.
2. Whether the claim petitioner is not maintainable as the petitioner has concealed the true and material facts from this Court and she had been engaged on contract for a fixed period in a project sponsored by ISED, as alleged, if so its effects thereto? . . *OPR*.

3. Relief

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

8. Arguments of the learned Counsel for the parties heard and records gone through. I have also gone through the written arguments placed on record by the petitioner.

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

Issue No.1 : Negative.

Issue No. 2 : Yes.

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

REASONS FOR FINDINGS

Issues No.1& 2.

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

11. In support of her case, the petitioner, examined three PWs. She herself stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she reiterated almost all the averments as made in the claim petition.

12. In the cross-examination, she admitted that she was appointed as trainer in the institute vide appointment letters for fixed period. Volunteered that, her signatures on the letters were obtained lateron. She denied that her appointment was upto June, 2017. Self-stated that she had worked thereafter also in ISED. She denied that she was paid honorarium. She further denied that no junior to her was retained by the ISED. She also denied that ISED Scheme was closed, as there were no funds and work.

13. Ms. Rekha Devi was examined as a witness by the petitioner, who stated in her chief-examination, being in the shape of affidavit Ex. PW-2/A that she had undergone training for three months with the respondent. According to her sufficient work and funds are available.

14. Smt. Manju Thakur, who stepped into the dock as PW-3 stated in her affidavit Ex. PW-3/A that she had worked as a trainer with the respondent. Sufficient work and funds are available with the respondent.

15. In the cross-examinations, both these witnesses have denied that ISED Scheme had been closed for want of students and funds. PW-2 feigned ignorance, whereas PW-3 denied the fact that the petitioner was appointed for a fixed period.

16. The respondent on the other hand examined the Principal of the institute, as RW-1. Apart from tendering his affidavit by way of evidence (Ex. RW-1/A), which is nothing but a reiteration of facts mentioned in the reply, RW-1, Shri Rajesh Kumar, has placed on record, correction letter in the address of the institute addressed to Director, Directorate of Technical Education Vocational & Industrial Training, Sunder Nagar, H.P as RW-1/B. He has also placed on record the appointment letters as Ex. RX-1 to Ex. RX-7 and Mark R-1 to Mark R-2.

17. In the cross-examination, he denied that trainer/teacher are still working in the institute. He also denied that the petitioner had continuously worked for more than 10 years in the institute w.e.f. 2008 till 2017. He further denied that the petitioner had completed 240 working days in a calendar year. He admitted that no show cause notice or compensation was paid to the petitioner. Volunteered that as the petitioner was engaged on contractual basis for six months and

thereafter it was renewed from time to time, there was no requirement of issuance of notice or payment of compensation to the contractual employees.

18. Indisputably, the petitioner was engaged by the respondent as a trainer. It is primarily the case of the petitioner that her services were terminated by the respondent on 14.09.2017, without following the mandatory provisions of the Act.

19. Per contra, the respondent claimed that the appointment of the petitioner was made on contractual basis for specific period and it had come to an end by the efflux of time. So, it was contended that the termination of the petitioner with the end of fixed term of service would not amount to retrenchment and there cannot be said to be any violation of the provisions of the Act.

20. The definition of "retrenchment" in the Act is conclusive and it has been defined to mean the termination of the service of a workman by the employer for any reason whatsoever except the four exceptions carved out therein. As per Section 2(oo)(bb) of the Act, termination of service of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry does not amount to "retrenchment".

21. While under cross-examination, the petitioner has categorically admitted that she had been engaged for fixed tenures vide appointment letters. Though, the appointment letter issued to the petitioner has not been exhibited on record by the respondent, but the letters of her renewal of contract are there on record as Ex. RX-1 to Ex. RX-7. These are admitted documents on the part of the petitioner, as they were put to her in the cross-examination. She nowhere disputed these renewal letters, nor anything has come in her statement that these are forged and fabricated documents. It is clear from these letters of renewal of contract that they were issued in favour of the petitioner for fixed tenures. As per Ex. RX-1, the contractual period of the petitioner stood renewed by the respondent w.e.f. 2nd April, 2015 to 20th of September, 2015. Similarly, as per Ex. RX-2, the period of contract was renewed from 1.10.2015 to 31.3.2016. According to Ex. RX-3 the period had been renewed from 2nd of April, 2016 to 31.05.2016. Vide renewal letter Ex. RX-4 the period has been renewed from 01.06.2016 to 31.10.2016 and as per renewal letter Ex. RX-5, the period was further renewed from 01.10.2016 to 30.10.2016. Similarly, vide renewal letter Ex. RX-6 the contract period of the petitioner was renewed from 2.04.2017 to 14.06.2017. Not only this, the respondent has placed on record a photocopy of another renewal letter vide which the contract period of the petitioner had been renewed from 15.06.2017 to 14.09.2017. It is, thus, clear from the record that the petitioner was not terminated through any order, but rather by virtue of expiration of term of contract. Since, the termination of the petitioner on 14.09.2017 was a result of non-renewal of contract of employment on its expiry, it does not qualify to be termed as retrenchment. The same is covered by the exception given in sub clause (bb) of Section 2(oo) of the Act. When after having accepted the terms and conditions stipulated in the appointment letter, the period for which the petitioner was appointed has elapsed by efflux of time, she cannot be permitted to challenge the validity of her termination, which as per the petitioner lastly took placed on 14.09.2017. In case titled ***Vidya Vardhaka Sangha and Anr. Vs. Y.D Deshpande and Ors., 2006 LLR 1233***, it has been laid down by the Hon'ble Supreme Court that the appointment made on probation/adhoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post.

22. In ***Haryana State Agricultural Marketing Board V. Subhash Chand & Anr., 2006 (2) SCC 794***, the Hon'ble Supreme Court has held as under:

"11. *The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.*

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."

23. A similar view has been taken by the Hon'ble Supreme Court in case titled as ***"Escorts Limited Versus Presiding Officer and Another (1997)11 SCC 521".***

24. In ***Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri (2013) 14 SCC 456***, it has been laid down by the Hon'ble Supreme court that termination of service after expiry of contract does not amount to retrenchment and consequently workman cannot be reinstated.

25. In all fairness, the learned counsel for the petitioner has placed reliance upon cases titled as ***"Writ Petition No. 8880/2013 titled as Sachiv, Krishi Upaj Mandi Samiti, Laxmi Ganj Vs. Naresh Kumar Sharma decided on 18.06.2014 and Armed Forces Ex-Officers Multi Services Co-operative Society Ltd. Vs. Rashtriya Mazdoor Sangh (INTUC), 2022 Live Law (SC) 674***". For the reasons mentioned above, the petitioner cannot derive any advantage from what has been decided in these cases.

26. Therefore, in view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issue no.1 is answered in the negative and decided against the petitioner, while issue no.2 is answered in the affirmative and decided in favour of the respondent.

Relief

27. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th Day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

BEFORE YOGESH JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 102 of 2023

Instituted on : 02.08.2023

Decided on : 05.04.2024

Shikha, d/o Shri Joginder Singh, r/o Mohan Meaken Ltd., Solan Brewery, Tehsil and District Solan, H.P. . . *Petitioner*.

Versus

The Occupier M/s ETHIX Healthcare, 82/33 Kalka Shimla Highway, Deonghat, Tehsil & District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

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

"Whether the termination of services of Smt. Shikha, d/o Shri Joginder Singh, r/o Mohan Meaken Ltd., Solan Brewery, Tehsil and District Solan, H.P. by The Occupier M/s ETHIX Healthcare, 82/33 Kalka Shimla Highway, Deonghat, Tehsil & District Solan, H.P. w.e.f. 03.12.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified. If not, what relief of past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workman is entitled to from, the above managements?"

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

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

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

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central

Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of her services *w.e.f.* 03.12.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 5th day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

BEFORE YOGESH JASWAL, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 50 of 2020

Instituted on : 04.03.2020

Decided on : 05.04.2024

Sunil Suman s/o Late Shri J.L. Suman, r/o Suman Niwas, Near Cemetary Gate, P.O. Sanjauli, Shimla-6, HP. . . *Petitioner*.

Versus

The Chief Executive Officer, Shimla Sanatorium & Hospital, Chaura Maidan, Shimla, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri G.N. Verma, Advocate

For the Respondent : Ms. Reena Thakur, Advocate

AWARD

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

"**Whether termination of the services of Shri Sunil Suman s/o Late Shri J.L. Suman, r/o Suman Niwas, Near Cemetary Gate, P.O. Sanjauli, Shimla-6, HP by the Chief Executive Officer, Shimla Sanatorium & Hospital, Chaura Maidan, Shimla, HP *w.e.f.* 15.05.2019 without complying with the provisions of Industrial Disputes Act, 1947 as alleged, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management.?"**

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed by the respondent as Lab Technician in the month of August, 2015 on monthly salary of ₹ 11,000/-. He used to do the day to day work of the Laboratory without any helper, but his services

were terminated on 15.05.2019 without following the procedure of Industrial Disputes Act, 1947 (hereinafter referred as the Act). He had worked continuously since August, 2015 till May 2019 and had completed 270 days in a year, without any break. Neither any notice under Section 25-F of the Act had been issued to him nor any compensation was paid. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability, cause of action and the petitioner having not approached the Court with clean hands. On merits, it is denied that the petitioner was the only person who used to do the day to day work of the Laboratory without any helper. It is further denied that his services were terminated without following the procedure of the Act. It is submitted that the contract period of the petitioner had already expired and he was intimated about the expiration of the contract on 22.03.2019. The laboratory in the respondent-hospital has been outsourced *w.e.f.* 01.04.2019 and as such the services of the workers in the laboratory are no more required. In the month of July, 2018, the petitioner was asked to give his willingness for deduction of Provident Fund, but he had refused. One staff nurse, namely, Sandeepika had made complaints dated 21.11.2018 and 29.07.2019 against the petitioner regarding harassment and unwarranted behavior. On the complaints, warning letter was issued to him by the Administrator-cum-Chief Executive Officer of the hospital. Repeated warning letters had been issued to him regarding his misbehavior with the employees, non-performance of duties and for not coming to hospital in time. While terminating his services, a notice for his retrenchment was issued and salary for three months was also paid to him. It is denied that the petitioner had worked continuously with the respondent. It is further denied that neither any notice under Section 25-F of the Act was issued nor he was paid compensation. The respondent prayed for the dismissal of the claim petition.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 19.05.2022:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 15.05.2019, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified as alleged? If yes, what relief the petitioner is entitled to? . . *OPP*.

2. Whether the claim petition is not 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. Arguments of the learned Counsel for the parties heard and records gone through.

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

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

REASONS FOR FINDINGS

Issues No. 1.

10. To substantiate his case, the petitioner, namely, Shri Sunil Suman has appeared in the witness box as (PW-1) and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence registration certificate as Ex. PW-1/B, copy of diploma in medical laboratory technology as Ex. PW-1/C, copy of statement of marks obtained in diploma in medical laboratory technology as Ex. PW-1/D and demand notice as Mark PX-1.

11. In cross-examination, he stated that he was engaged as a Lab Technician in the month of August, 2015 and had worked continuously till 15.05.2019. His services were renewed on annual basis. He denied that he was informed by the respondent that the agreement stood repudiated in the year, 2019. He admitted that the agreement was not renewed after 2019. He denied that he had been informed about the outsourcing of the laboratory. He further denied that there is no work/job left with the respondent-hospital. He admitted that one Sandeepika was working with the respondent, but denied that she had filed complaint Ex. R-1 against him to which show cause notice Ex. R-2 was issued. He also denied that one complaint Ex. R-3 was also filed against him and retrenchment notice Ex. R-4 was sent to him through registered letter Ex. R-5, postal receipt of which is Ex. R-6, with full & final amount of ` 33,000/-. He also denied that vide Mark RX-1 he was intimated regarding the expiry of contract. He denied that he had caused loss to the hospital to the tune of ₹ 52,174.78 on account of expiry of test kits.

12. Before, I proceed further, it is important to mention here that despite availing ten opportunities the respondent had failed to lead any evidence in defence, hence vide order dated 04.01.2024, the evidence of the respondent was closed under the orders of the Court.

13. Admittedly, the petitioner was engaged by the respondent as Laboratory Technician. It is primarily the case of the petitioner that his services were terminated by the respondent on 15.05.2019, without following the mandatory provisions of the Act.

14. Per contra, the respondent claimed that the appointment of the petitioner was made on contractual basis for specific period and it had come to an end by the efflux of time. So, it was

contended that the termination of the petitioner with the end of fixed term of service would not amount to retrenchment and there cannot be said to be any violation of the provisions of the Act.

15. The definition of "retrenchment" in the Act is conclusive and it has been defined to mean the termination of the service of a workman by the employer for any reason whatsoever except the four exceptions carved out therein. As per Section 2(oo)(bb) of the Act, termination of service of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry does not amount to "retrenchment".

16. While under cross-examination, the petitioner has stated that his services were renewed on annual basis. Manifest that he was being engaged by the respondent on yearly contractual basis. Then, the petitioner at one point of his cross-examination has categorically admitted that the agreement was not renewed after 2019. It is, thus, clear from this admission made by the petitioner that his services were not terminated, but rather by virtue of expiration of the term of the contract. Faced with this situation, by referring to the document Ex. R-4, it was contended by the learned counsel for the petitioner that the services of the petitioner were terminated by the respondent by issuing a notice, which is defective. True it is that such notice has been relied upon by the respondent, as it was put to the petitioner in his cross-examination, but no benefit can be derived from it by the petitioner simply for the reason that as per this notice the services of the petitioner are alleged to have been terminated *w.e.f.* 01.05.2019, whereas it is the own admitted case of the petitioner and so also is the reference that the termination had taken effect on 15.05.2019. Then, the petitioner himself had disputed of any such notice being served upon him. Since, as per his own admission, the termination of the petitioner on 15.05.2019 was a result of non-renewal of contract of employment on its expiry, it does not qualify to be termed as "retrenchment". The same is covered by the exception given in sub clause (bb) of Section 2(oo) of the Act. When after having accepted the terms and conditions stipulated in the agreement, the period for which the petitioner was appointed has elapsed by efflux of time, he cannot be permitted to challenge the validity of his termination, which as per the petitioner took placed on 15.05.2019. In case titled ***Vidya Vardhaka Sangha and Anr. Vs. Y.D Deshpande and Ors., 2006 LLR 1233***, it has been laid down by the Hon'ble Supreme Court that the appointment made on probation/adhoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post.

17. In ***Haryana State Agricultural Marketing Board V. Subhash Chand & Anr., 2006 (2) SCC 794***, the Hon'ble Supreme Court has held as under:

> ***"11.*** *The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.*
>
> *12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."*

18. A similar view has been taken by the Hon'ble Supreme Court in case titled as ***"Escorts Limited Versus Presiding Officer and Another (1997)11 SCC 521".***

19. In ***Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri (2013) 14 SCC 456***, it has been laid down by the Hon'ble Supreme court that termination of service after expiry of contract does not amount to retrenchment and consequently workman cannot be reinstated.

20. Therefore, in view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issue no.1 is answered in the negative and decided against the petitioner.

Issue No. 2

21. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is answered in the negative and against the respondent.

RELIEF

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th Day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 83 of 2023

Instituted on : 03.06.2023

Decided on : 05.04.2024

Pradeep Chand s/o Shri Pritam Chand, r/o V.P.O. Karoa, Tehsil Dehra, District Kangra, H.P. . . *Petitioner*.

Versus

Smt. Sneha Aggarwal w/o Shri Rajan Aggarwal (Prop.) CM Apparel, near Hotel Paragon, The Mall Solan, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

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

"Whether the termination of services of Shri Pradeep Chand s/o Shri Pritam Chand, r/o V.P.O. Karoa, Tehsil Dehra, District Kangra, H.P. by Smt. Sneha Aggarwal w/o Shri Rajan Aggarwal (Prop.) CM Apparel, near Hotel Paragon, The Mall Solan, District Solan, H.P. w.e.f. 01.03.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workman is entitled to from, the above management?"

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 01.03.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 5th day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

App. No. 319/2022

Shiv Ram v/s Principal St. Bedes College

05.04.2024
Present: Sh. Bhagwan Chand, Ld. Csl. for the petitioner

Sh. Deepak Gupta, Ld. Csl. for the respondent

ORDER

Today the learned counsel for the petitioner as per his statement separately recorded and placed on the file, intends to withdraw the present claim petition on behalf of the petitioner, which has been filed under Section 2A of the Industrial Disputes Act, 1947. In view of this statement of the learned counsel for the petitioner, permission is granted to the petitioner to withdraw this claim petition. Accordingly, this claim petition filed under Section 2A of the Industrial Disputes Act, 1947 is dismissed as withdrawn.

Copy of this order be sent to the appropriate Government for publication in the official gazette and the file after its due completion be consigned to the record room.

Announced
05.04.2024

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court, Shimla.

App. No. 320/2022

Beersai Kujur v/s Principal St. Bedes College

05.04.2024
Present: Sh. Bhagwan Chand, Ld. Csl. for the petitioner

Sh. Deepak Gupta, Ld. Csl. for the respondent

ORDER

Today the learned counsel for the petitioner as per his statement separately recorded and placed on the file, intends to withdraw the present claim petition on behalf of the petitioner, which has been filed under Section 2A of the Industrial Disputes Act, 1947. In view of this statement of the learned counsel for the petitioner, permission is granted to the petitioner to withdraw this claim petition. Accordingly, this claim petition filed under Section 2A of the Industrial Disputes Act, 1947 is dismissed as withdrawn.

Copy of this order be sent to the appropriate Government for publication in the official gazette and the file after its due completion be consigned to the record room.

Announced
05.04.2024

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court, Shimla.

App. No. 321/2022

Harvinder Krishan v/s Principal St. Bedes College

05.04.2024
Present: Sh. Bhagwan Chand, Ld. Csl. for the petitioner

Sh. Deepak Gupta, Ld. Csl. for the respondent

ORDER

Today the learned counsel for the petitioner as per his statement separately recorded and placed on the file, intends to withdraw the present claim petition on behalf of the petitioner, which has been filed under Section 2A of the Industrial Disputes Act, 1947. In view of this statement of the learned counsel for the petitioner, permission is granted to the petitioner to withdraw this claim petition. Accordingly, this claim petition filed under Section 2A of the Industrial Disputes Act, 1947 is dismissed as withdrawn.

Copy of this order be sent to the appropriate Government for publication in the official gazette and the file after its due completion be consigned to the record room.

Announced
05.04.2024

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court, Shimla.

App. No. 322/2022

Ishwar Dass v/s Principal St. Bedes College

05.04.2024
Present: Sh. Bhagwan Chand, Ld. Csl. for the petitioner

Sh. Deepak Gupta, Ld. Csl. for the respondent

ORDER

Today the learned counsel for the petitioner as per his statement separately recorded and placed on the file, intends to withdraw the present claim petition on behalf of the petitioner, which has been filed under Section 2A of the Industrial Disputes Act, 1947. In view of this statement of the learned counsel for the petitioner, permission is granted to the petitioner to withdraw this claim petition. Accordingly, this claim petition filed under Section 2A of the Industrial Disputes Act, 1947 is dismissed as withdrawn.

Copy of this order be sent to the appropriate Government for publication in the official gazette and the file after its due completion be consigned to the record room.

Announced
05.04.2024

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court, Shimla.

App. No. 323/2022

Vishwanth Oran v/s Principal St. Bedes College

05.04.2024
Present: Sh. Bhagwan Chand, Ld. Csl. for the petitioner

Sh. Deepak Gupta, Ld. Csl. for the respondent

ORDER

Today the learned counsel for the petitioner as per his statement separately recorded and placed on the file, intends to withdraw the present claim petition on behalf of the petitioner, which has been filed under Section 2A of the Industrial Disputes Act, 1947. In view of this statement of the learned counsel for the petitioner, permission is granted to the petitioner to withdraw this claim petition. Accordingly, this claim petition filed under Section 2A of the Industrial Disputes Act, 1947 is dismissed as withdrawn.

Copy of this order be sent to the appropriate Government for publication in the official gazette and the file after its due completion be consigned to the record room.

Announced
05.04.2024

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court, Shimla.

App. No. 324/2022

Niram Dass v/s Principal St. Bedes College

05.04.2024
Present: Sh. Bhagwan Chand, Ld. Csl. for the petitioner

Sh. Deepak Gupta, Ld. Csl. for the respondent

ORDER

Today the learned counsel for the petitioner as per his statement separately recorded and placed on the file, intends to withdraw the present claim petition on behalf of the petitioner, which has been filed under Section 2A of the Industrial Disputes Act, 1947. In view of this statement of the learned counsel for the petitioner, permission is granted to the petitioner to withdraw this claim petition. Accordingly, this claim petition filed under Section 2A of the Industrial Disputes Act, 1947 is dismissed as withdrawn.

Copy of this order be sent to the appropriate Government for publication in the official gazette and the file after its due completion be consigned to the record room.

Announced
05.04.2024

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court, Shimla.

App. No. 325/2022

Kuldeep Eka v/s Principal St. Bedes College

05.04.2024
Present: Sh. Bhagwan Chand, Ld. Csl. for the petitioner

Sh. Deepak Gupta, Ld. Csl. for the respondent

ORDER

Today the learned counsel for the petitioner as per his statement separately recorded and placed on the file, intends to withdraw the present claim petition on behalf of the petitioner, which has been filed under Section 2A of the Industrial Disputes Act, 1947. In view of this statement of the learned counsel for the petitioner, permission is granted to the petitioner to withdraw this claim petition. Accordingly, this claim petition filed under Section 2A of the Industrial Disputes Act, 1947 is dismissed as withdrawn.

Copy of this order be sent to the appropriate Government for publication in the official gazette and the file after its due completion be consigned to the record room.

Announced
05.04.2024

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court, Shimla.

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 80 of 2023

Instituted on : 03.06.2023

Decided on : 10.04.2024

Sandeep Kumar s/o Shri Roop Ram, r/o Village Srinagar, P.O. & Tehsil Kandaghat, District Solan, H.P. . . *Petitioner*.

Versus

1. The Occupier/ Factory Manager, M/s Johnson & Johnson Limited, 58-B, EPIP, Phase-I Jharmajri, Tehsil Baddi, District Solan, H.P.

2. The Contractor, M/s TDS Placements & Services Pvt. Ltd., Near Toll Tax Barrier, Tehsil Baddi, District Solan, H.P. . . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Sh. Rajeev Sharma, Adv.

AWARD

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

1. *"Whether Sh. Sandeep Kumar s/o Sh. Roop Ram, r/o Village Srinagar, P.O. & Tehsil Kandaghat, District Solan, H.P. who was initially engaged as Supervisor at the time of termination of services, falls under the definition of "workman" u/s 2(s) of the Industrial Disputes Act, 1947? If yes, what relief, Shri Sandeep Kumar is entitled to? And if not, what it's effect?"*

2. *"Whether termination of the services of Sh. Sandeep Kumar s/o Sh. Roop Ram, r/o Village Srinagar, P.O. & Tehsil Kandaghat, District Solan, H.P by the (1) The Occupier/ Factory Manager, M/s Johnson & Johnson Limited, 58-B, EPIP, Phase-I Jharmajri, Tehsil Baddi, District Solan, H.P., (2) The Contractor, M/S TDS Placements & Services Pvt. Ltd., Near Toll Tax Barrier, Tehsil Baddi, District Solan, H.P. vide notice dated 25.11.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workman is entitled to from the above management?"*

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It

creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee petitioner is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the petitioner is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

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

9. As per the reference, it was required of the petitioner to firstly plead and prove on record that he was a workman as defined under Section 2(s) of the Act, and thereafter to allege and prove that the termination of his services *w.e.f.* 25.11.2020 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner. At the risk of repetition the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 10th day of April, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, *H.P.*

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 32 of 2023

Instituted on : 01.03.2023

Decided on : 10.04.2024

Rimpu Dhiman s/o Shri Parveen Kumar, r/o Village & P.O. Rajiana, Tehsil & District Kangra, H.P. . . *Petitioner*.

Versus

The Occupier/ Factory Manager, M/s Johnson & Johnson Limited, 58-B, EPIP, Phase-I, Village Jharmajri, Tehsil Baddi, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Sh. Rajeev Sharma, Adv.

AWARD

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

"Whether the demand of Sh. Rimpu Dhiman s/o Shri Parveen Kumar, r/o Village & P.O. Rajiana, Tehsil & District Kangra, H.P.- 176029 for reinstatement in services w.e.f. 21.12.2020 before the Occupier/ Factory Manager, M/S Johnson & Johnson Limited, 58-B, EPIP, Phase-I, Village Jharmajri, Tehsil Baddi, District Solan, H.P. is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?" and if not its effects?

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 21.12.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 10th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, *H.P.*

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, Shimla**. **AT CAMP COURT NALAGARH.**

Reference Number	:	20 of 2023
Instituted on	:	05.01.2023
Decided on	:	26.04.2024

Pawan Thakur s/o Shri Pyar Chand Thakur, r/o Village Baniru, P.O. Baag, Tehsil Ladbhrol, District Mandi, H.P. . . *Petitioner*.

Versus

The Factory Manager, M/s Regal Kitchen Foods Ltd., Plot No. 7 Barotiwala Industrial Area, P.O. Barotiwala, Tehsil Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Sh. Vishal Sharma, Adv.

AWARD

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

1. *"Whether Shri Pawan Thakur s/o Shri Pyar Chand Thakur, r/o Village Baniru, P.O. Baag, Tehsil Ladbhrol, District Mandi, H.P. who was initially engaged as Senior Executive Accounts Manager at the time of termination of services, falls under the definition of "workman" u/s 2(s) of the Industrial Disputes Act, 1947? If yes, what relief, Shri Pawan Thakur is entitled to? And if not, what it's effect?"*

2. *"Whether termination of the services of Sh. Pawan Thakur s/o Shri Pyar Chand Thakur, r/o Village Baniru, P.O. Baag, Tehsil Ladbhrol, District Mandi, H.P. by the The Occupier/ Factory Manager, M/S Regal Kitchen Foods Ltd., Plot No. 7 Barotiwala Industrial Area, P.O. Barotiwala, Tehsil Nalagarh, District Solan, H.P. w.e.f. 12.03.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workman is entitled to from the above management?"*

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to firstly plead and prove on record that he was a workman as defined under Section 2(s) of the Act, and thereafter to allege and prove that the termination of his services *w.e.f.* 12.03.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner. At the risk of repetition the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms

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

Announced in the open Court today this 26th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.
At camp Court Nalagarh.

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA AT CAMP COURT NALAGARH**

Reference Number : 33 of 2023

Instituted on : 01.03.2023

Decided on : 26.04.2024

Sunil Kumar s/o Shri Rajender Kumar, Village Paniyal, P.O. Masroor, Tehsil Dehra, District Kangra, H.P. . . *Petitioner*.

Versus

The Occupier/ Factory Manager, M/s Scott Edil Pharmacia Ltd., village Jharmajri, P.O. Barotiwala, Tehsil Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

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

"Whether the termination of services of Shri Sunil Kumar s/o Shri Rajender Kumar, Village Paniyal, P.O. Masroor, Tehsil Dehra, District Kangra, H.P. by the Factory Manager, M/s Scott Edil Pharmacia Ltd., village Jharmajri, P.O. Barotiwala, Tehsil Nalagarh, District Solan, H.P. w.e.f. 18.12.2021 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workman is entitled to from, the above management?"

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 18.12.2021 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 26th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.
At camp Court Nalagarh.

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM**-LABOUR COURT, SHIMLA AT CAMP COURT NALAGARH**

Reference Number : 36 of 2023

Instituted on : 01.03.2023

Decided on : 26.04.2024

Ram Kumar, r/o Village Mohat, Tehsil Bhatiyat, Kharer, District Chamba, H.P.
. . *Petitioner*.

Versus

The Occupier/ Factory Manager, M/s Dycott Health Care industries, Village Dasomajra, P.O. Bhud, Khasra No. 341/1, Tehsil Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Sh. Vishal Sharma, Adv.

AWARD

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

"Whether the termination of services of Shri Ram Kumar, r/o Village Mohat, Tehsil Bhatiyat, Kharer, District Chamba, H.P. by the Factory Manager, M/s Dycott Health Care industries, Village Dasomajra, P.O. Bhud, Khasra No. 341/1, Tehsil Nalagarh, District Solan, H.P. w.e.f. 15.02.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workman is entitled to from, the above management?"

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 15.02.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 26th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.
At camp Court Nalagarh.

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-**LABOUR COURT, SHIMLA AT CAMP COURT NALAGARH**

Reference Number	:	15 of 2023
Instituted on	:	04.01.2023
Decided on	:	26.04.2024

Rajinder Kumar s/o Sh. Mohar Chand, c/o Sh. Vijay s/o Shri Budh Ram, Village Kishanpura, P.O. Gurumajra, Tehsil Nalagarh, District Solan, H.P. . . *Petitioner.*

Versus

The Factory Manager/ Occupier, M/s Superhoze Industries Pvt. Ltd., Village Dhela, P.O. Gurumajra, Tehsil Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Sh. Vishal Sharma, Adv.

AWARD

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

"Whether the termination of services of Shri Rajinder Kumar s/o Sh. Mohar Chand, c/o Sh. Vijay, s/o Shri Budh Ram, Village Kishanpura, P.O. Gurumajra, Tehsil Nalagarh, District Solan, H.P. by the Factory Manager/ Occupier, M/s Superhoze Industries Pvt. Ltd., Village Dhela, P.O. Gurumajra, Tehsil Nalagarh, District Solan, H.P. w.e.f. 10.08.2021 after conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management?"

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

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

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

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

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

5. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a

Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 10.08.2021 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 26th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.
At camp Court Nalagarh.

BEFORE YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 122 of 2023

Instituted on : 30.12.2023

Decided on : 29.04.2024

Kartar Singh s/o Shri Tarsem Singh & 52 others Employees Sarvotham Remedies Limited c/o Village Katha, P.O. & Tehsil Baddi, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager, M/s Sarvotham Remedies Ltd., Village Katha, P.O. & Tehsil Baddi, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

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

*"Whether the demand raised vide demand notice dated 21.03.2023 (**copy enclosed)** by Shri Kartar Singh s/o Shri Tarsem Singh & All Employees Sarvotham Remedies Limited, c/o Village Katha, P.O. & Tehsil Baddi, District Solan, H.P. to be fulfilled by the Factory Manager, M/s Sarvotham Remedies Ltd., Village Katha, P.O. & Tehsil Baddi, District Solan, H.P., are proper and justified? If yes, to what monetary and other consequential service benefits the above mentioned workmen are entitled to from the above said Employers?"*

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

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

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

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central

Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the demands raised by them *vide* demand notice dated 21.03.2023 were proper and justified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioners/workmen. At the risk of repetition the petitioners/workmen had not put in appearance before this Tribunal. In this view of the matter, the petitioners are not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 29th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.

BEFORE YOGESH JASWAL, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, SHIMLA

Reference Number : 102 of 2019

Instituted on : 02.07.2019

Decided on : 29.04.2024

Dalip Kumar s/o Shri Ram Dutt, r/o Village Deori, P.O. Garkhal, Tehsil Kasauli, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager M/s Optima Industries, Unit-II, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Kirti Thakur, Legal Aid Counsel

For the Respondent : Shri V.S. Jaswal, Advocate

AWARD

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

"**Whether implied termination of the services of Shri Dalip Kumar s/o Shri Ram Dutt, r/o Village Deori, P.O. Garkhal, Tehsil Kasauli, District Solan, H.P. by way of transferring him from Parwanoo Unit to Kundli Unit, District Sonipat Haryana by the management M/s Optima Industries, Unit-II, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. during October, 2018 without complying with the provisions of Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, seniority, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. The case of the petitioner, as it emerges from the statement of claim is that he was working as System Preparer with the respondent *w.e.f.* 01.01.2013 till 30.11.2017 at pay band of ₹4,800/- per month, which was increased to ₹ 8709/- per month. His conduct and performance was satisfactory as he was never served with any show cause notice, charge-sheet, warnings or complaints. In order to put pressure upon the petitioner and other workers, he along-with other workers had been transferred to Sonipat (Haryana) and when they had shown their inability to work there, the gate of the company had been locked for them, thereby terminating their services. Due to illegal act of the respondent, the petitioner suddenly lost his earnings, he being the sole bread earner of the family. The petitioner had gone pillar to post for his reinstatement, but of no avail. He was stated to be retrenched by adopting illegal procedure by the company. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability, jurisdiction, cause of action, the petitioner having not approached the Court with clean hands and estoppel. On merits, it is admitted that the petitioner was appointed as System Preparer and Fixer on 05.10.2010. It is averred that the process for closure of Unit-II at Parwanoo had been started in the month of September, 2018 and in order to accommodate the petitioner and to maintain the seniority of the employees, the transfer order dated 19.09.2018 had been issued to him, but he had not joined his duties at his new place of posting. Full & final amount of ₹90,016/- had been paid to him. The respondent had also informed the Member Secretary, SWCA, Department of Industries, Parwanoo regarding the closure on 05.03.2020. It is denied that the petitioner and other workers had been transferred to Sonipat in order to put pressure upon them. All the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) were stated to have been complied with. The respondent has prayed for the dismissal of the claim petition.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 30.08.2022:

1. Whether the termination of the services of the petitioner by way of transferring him from Parwanoo Unit to Kundli Unit, during October, 2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified as alleged? If so, what relief of service benefits, the petitioner is entitled to? . . *OPP*.

2. Whether the present petition is neither competent nor not maintainable, as? . . *OPR*.

3. Relief

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

8. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No. 1	:	Yes
Issue No. 2	:	No
Relief	:	Reference is answered in the affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

Issue No.1

10. To substantiate his case, the petitioner, namely, Shri Dalip Kumar has appeared in the witness box as (PW-1) and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence his appointment letter as Mark PX-1 and copy of transfer letter as Mark PX-2.

11. In cross-examination, he stated that he had worked with the respondent company w.e.f. 2010 to 2017. He feigned ignorance that the company had started the process for closure in the year 2019. He admitted that he was transferred to Sonipat Unit from Parwanoo Unit and that he had not joined there. He denied that he had intentionally violated the transfer orders. He also denied that the company had rightly terminated his services due to his non-joining at the transferred place.

12. The respondent on the other hand examined one Ms. Sarabjit Kaur, Management Representative, as RW-1. Apart from tendering her affidavit by way of evidence as Ex. RW-1/A, which is nothing but a reiteration of facts mentioned in the reply, she has placed on record authority letter as Ex. R-1, full and final settlement as Ex. R-2, transfer letter as Ex. R-3, appointment letter as Ex. R-4, letters dated 06.03.2020 and 24.06.2020 as Mark RX-1 and Mark RX-2.

13. In cross-examination, she admitted that the petitioner had worked with the respondent with honesty and sincerity for more than eight years. She further admitted that the petitioner was getting his annual increment regularly. She denied that no notice of change of work place had been given to the petitioner. She further denied that the services of the petitioner had been retrenched on account of excess labour. Volunteered that, he was transferred as the factory was closed. She admitted that no document regarding the closure of factory has been placed on record. She denied that the petitioner was not paid the full & final settlement amount.

14. Admittedly, the services of the petitioner had been engaged by the respondent as an Operator/System Preparer and Fixer *w.e.f.* 01.01.2013, vide appointment letters Mark PX-1 and Ex. P-4. It is not in dispute that the petitioner had been transferred to another Unit at Sonipat (Haryana), vide transfer order Ex. R-3 and that his services have been terminated on account of closure of the Unit at Parwanoo. The respondent in its reply has specifically mentioned that the process of closure

of Unit-II at Parwanoo had been started in the month of September, 2018 and to accommodate the petitioner, his services were transferred to another Unit at Sonipat (Haryana), but as he had failed to join his duties at the transferred place, his services were terminated on account of closure by paying full and final payment of ₹ 90,016/-.

15. In essence the dispute does not *per se* relate to the termination simplicitor, but to the closure of the unit at Parwanoo, which ultimately led to the termination of the services of the petitioner. The reference could have been more happily worded by including the real dispute between the parties relating to the closure of the unit, which firstly led to the transfer and thereafter to the termination of the services of the petitioner. No doubt the jurisdiction of the Tribunal/Labour Court is to be confined to the terms of reference, but at the same time it is empowered to go into the incidental issues. Since, the respondent has set up a case that the termination of services of the petitioner was the result of the closure of the unit at Parwanoo, which though has not been referred to, this Court can still venture into such dispute. For taking this view I am fortified by the judgment rendered by the Hon'ble Supreme Court in case titled as ***Tata Iron and Steel Company Ltd., Vs. State of Jharkhand and Others (2014) 1 SCC 536***.

16. Since, in the case on hand the respondent is seeking to justify the retrenchment of the petitioner on the ground of closure of the Unit at Parwanoo, therefore, in order to come to the conclusion, whether or not the termination was justified, this Tribunal necessarily has to first decide whether or not there was a closure. In case titled as ***J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87***, the Hon'ble Supreme Court has observed that where the employer is seeking to justify the retrenchment on the ground of closure of a section of the plant, in such circumstances the question whether there was a closure and whether the same was bonafide, although was not referred to the Industrial Tribunal, could be decided by it.

17. Section 25-FFA of the Act requires the employer intending to effect closure of an undertaking to give notice. A closure must be preceded by giving 60 days' notice in the prescribed manner stating the reasons for intended closure. The object of this Section is to prevent a sudden closure. The notice of 60 days is required to be given to the appropriate Government presumably to consider whether it should take any measure in respect of such intended closure.

18. Closure in violation of Sections 25-FFA and 25-FFF does not result in termination of service. These Sections stipulate the need for a notice and payment of compensation in accordance with the provisions of Section 25-F, as if the workman is retrenched when the undertaking is closed. These provisions make it clear that closure which only amounts to the employer drawing the shutters need not necessarily result in termination of service of the workman. It is only when the closure in accordance with the Act is effected that there would be termination of service. Closure and termination of service without following the procedure prescribed in the above mentioned Sections is inoperative, ineffective and invalid in law. For taking this view I place reliance upon the case titled as ***Maharashtra General Kamgar Union Vs. Glass Containers (Pvt. Ltd.) and another (1983) 1 LLJ 326 (Bom.)***

19. Except for the self-serving and oral testimony of RW-1 Smt. Sarbjit Kaur, who has merely stated in her chief examination regarding the initiation of the process of closure of the company in the year 2018, there is nothing on record to show that a notice in the prescribed manner stating the reasons for intended closure had been given. While under cross-examination RW-1 Smt. Sarbjit Kaur was categoric that no document regarding the closure of the factory had been placed on record. Therefore, it can safely be held that the respondent has failed to establish on

record that there was a closure of the unit of the respondent at Parwanoo. Faced with the situation, it was contended for the respondent by referring to the documents Mark RX-1 and Mark RX-2 that the same depict the closure of the unit at Parwanoo. This cannot be accepted. Mark RX-1 is merely an intimation to the Member Secretary, SWCA, Department of Industries, Parwanoo, District Solan, HP that the respondent was intending to close its factory at Parwanoo on account of financial difficulties. Mark RX-2 is merely a certificate issued by Assistant Engineer, Electrical Sub Division, HPSEBL, Parwanoo to the effect that the connection in the name of M/s Optima Industries at Plot No. 15, Sector-2, Parwanoo had been permanently disconnected. These documents nowhere go to show that there had indeed been a closure of the unit of the respondent at Parwanoo.

20. It was then contended for the respondent that full & final settlement amount stands already paid to the petitioner, as per Ex. R-2. This document would also not come to the rescue of the respondent in any manner, firstly for the reason that the same was never put to the petitioner in his cross-examination by the respondent. Even no question or any suggestion had been put to the petitioner by the respondent that full & final settlement amount stood paid to him. Secondly, as discussed above, since the respondent has failed to prove its plea of closure on record, this document pales into insignificance.

21. Since, in the case on hand, the respondent has failed to establish on record the closure in accordance with the Act, the petitioner/workman is entitled to be treated to have continued in service throughout. The transfer of the petitioner as per Ex. R-3 and the termination of his services thereafter on the basis of the closure of the Unit of the respondent at Parwanoo is held to be inoperative, ineffective and invalid in law. He is accordingly entitled to be reinstated in service with continuity in service and all consequential monetary benefits. Hence, this issue is answered in the affirmative and in favour of the petitioner.

Issue No. 2

22. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is answered in the negative and against the respondent.

Relief

23. As a sequel to my above discussion and findings on issues no. 1 and 2 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination i.e during October, 2018 along-with all monetary benefits. The monetary benefits shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th Day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.

BEFORE YOGESH JASWAL, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 103 of 2019

Instituted on : 02.07.2019

Decided on : 29.04.2024

Chetan Dev s/o Shri Bal Krishan, r/o Village Kohlu Ka Kheeh, P.O. Dhar Ki Ber, Tehsil Kasuali, District Solan, H.P. . . *Petitioner*.

Versus

The Factory Manager M/s Optima Industries, Unit-II, Sector-2, Parwanoo Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Anuj Kumar, Legal Aid Counsel

For the Respondent : Shri V.S. Jaswal, Advocate

AWARD

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

"**Whether implied termination of the services of Shri Chetan Dev s/o Shri Bal Krishan, r/o Village Kohlu Ka Kheeh, P.O. Dhar Ki Ber, Tehsil Kasuali, District Solan, H.P. by way of transferring him from Parwanoo Unit, District Solan to Kundli Unit, District Sonipat Haryana by the management M/s Optima Industries, Unit-II Sector-2, Parwanoo, Tehsil Kasauli, District Solan, HP during October, 2018 without complying with the provisions of Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, seniority, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. The case of the petitioner, as it emerges from the statement of claim is that he was working as System Preparer with the respondent w.e.f. 01.04.2010 till 30.11.2017 at pay band of ₹ 4,800/- per month, which was increased to ₹ 8709/- per month. His conduct and performance was satisfactory as he was never served with any show cause notice, charge-sheet, warnings or complaints. In order to put pressure upon the petitioner and other workers, he along-with other workers had been transferred to Sonipat (Haryana) and when they had shown their inability to work there, the gate of the company had been locked for them, thereby terminating their services. Due to illegal act of the respondent, the petitioner suddenly lost his earnings, he being the sole bread earner of the family. The petitioner had gone pillar to post for his reinstatement, but of no avail. He was stated to be retrenched by adopting illegal procedure by the company. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability, jurisdiction, cause of action, the petitioner having not approached the Court with clean hands and estoppel. On merits, it is admitted that the petitioner was appointed as System Preparer and Fixer on 01.04.2010. It is averred that the process for closure of Unit-II at Parwanoo had been started in the month of September, 2018 and in order to accommodate the petitioner and to maintain the seniority of the employees, the transfer order dated 19.09.2018 had been issued to him, but he had not joined his duties at his new place of posting. Full & final amount of ₹90,016/- had been paid to him. The respondent had also informed the Member Secretary, SWCA, Department of Industries, Parwanoo regarding the closure on 05.03.2020. It is denied that the petitioner and other workers had been transferred to Sonipat in order to put pressure upon them. All the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) were stated to have been complied with. The respondent has prayed for the dismissal of the claim petition.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 30.08.2022:

1. Whether the termination of the services of the petitioner by way of transferring him from Parwanoo Unit to Kundli Unit, during October, 2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified as alleged? If so, what relief of service benefits, the petitioner is entitled to? . . *OPP*.

2. Whether the present petition is neither competent nor not maintainable, as? . . *OPR*.

3. Relief

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

8. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No.1 : Yes

Issue No. 2 : No

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

REASONS FOR FINDINGS

Issue No.1

10. To substantiate his case, the petitioner, namely, Shri Chetan Dev has appeared in the witness box as (PW-1) and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence his appointment letter as Ex. P-1, demand notices as Ex. P-2 and Ex. P-3, letter dated 07.12.2018 as Ex. P-4, notice dated 19.09.2018 as Mark PX-1 and copy of transfer letter as Mark PX-2.

11. In cross-examination, he stated that he had worked with the respondent company w.e.f. 2010 to 2017. He feigned ignorance that the company had started the process for closure in the year 2019. He admitted that he was transferred to Sonipat Unit from Parwanoo Unit and that he had not joined there. He denied that he had intentionally violated the transfer orders. He also denied that the company had rightly terminated his services due to his non-joining at the transferred place.

12. The respondent on the other hand examined one Ms. Sarabjit Kaur, Management Representative, as RW-1. Apart from tendering her affidavit by way of evidence as Ex. RW-1/A, which is nothing but a reiteration of facts mentioned in the reply, she has placed on record authority letter as Ex. R-1, full and final settlement as Ex. R-2, transfer letter as Ex. R-3, appointment letter as Ex. R-4, letters dated 06.03.2020 and 24.06.2020 as Mark RX-1 and Mark RX-2.

13. In cross-examination, she admitted that the petitioner had worked with the respondent with honesty and sincerity for more than eight years. She further admitted that the petitioner was getting his annual increment regularly. She denied that no notice of change of work place had been given to the petitioner. She further denied that the services of the petitioner had been retrenched on account of excess labour. Volunteered that, he was transferred as the factory was closed. She admitted that no document regarding the closure of factory has been placed on record. She denied that the petitioner was not paid the full & final settlement amount.

14. Admittedly, the services of the petitioner had been engaged by the respondent as an Operator/System Preparer and Fixer w.e.f. 01.04.2010, vide appointment letters Ex. P-1 and Ex. P-4. It is not in dispute that the petitioner had been transferred to another Unit at Sonipat (Haryana), vide transfer order Ex. R-3 and that his services have been terminated on account of closure of the Unit at Parwanoo. The respondent in its reply has specifically mentioned that the process of closure

of Unit-II at Parwanoo had been started in the month of September, 2018 and to accommodate the petitioner, his services were transferred to another Unit at Sonipat (Haryana), but as he had failed to join his duties at the transferred place, his services were terminated on account of closure by paying full and final payment of ₹ 79,886/-.

15. In essence the dispute does not *per se* relate to the termination simplicitor, but to the closure of the unit at Parwanoo, which ultimately led to the termination of the services of the petitioner. The reference could have been more happily worded by including the real dispute between the parties relating to the closure of the unit, which firstly led to the transfer and thereafter to the termination of the services of the petitioner. No doubt the jurisdiction of the Tribunal/Labour Court is to be confined to the terms of reference, but at the same time it is empowered to go into the incidental issues. Since, the respondent has set up a case that the termination of services of the petitioner was the result of the closure of the unit at Parwanoo, which though has not been referred to, this Court can still venture into such dispute. For taking this view I am fortified by the judgment rendered by the Hon'ble Supreme Court in case titled as ***Tata Iron and Steel Company Ltd., Vs. State of Jharkhand and Others (2014) 1 SCC 536***.

16. Since, in the case on hand the respondent is seeking to justify the retrenchment of the petitioner on the ground of closure of the Unit at Parwanoo, therefore, in order to come to the conclusion, whether or not the termination was justified, this Tribunal necessarily has to first decide whether or not there was a closure. In case titled as ***J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87***, the Hon'ble Supreme Court has observed that where the employer is seeking to justify the retrenchment on the ground of closure of a section of the plant, in such circumstances the question whether there was a closure and whether the same was bonafide, although was not referred to the Industrial Tribunal, could be decided by it.

17. Section 25-FFA of the Act requires the employer intending to effect closure of an undertaking to give notice. A closure must be preceded by giving 60 days' notice in the prescribed manner stating the reasons for intended closure. The object of this Section is to prevent a sudden closure. The notice of 60 days is required to be given to the appropriate Government presumably to consider whether it should take any measure in respect of such intended closure.

18. Closure in violation of Sections 25-FFA and 25-FFF does not result in termination of service. These Sections stipulate the need for a notice and payment of compensation in accordance with the provisions of Section 25-F, as if the workman is retrenched when the undertaking is closed. These provisions make it clear that closure which only amounts to the employer drawing the shutters need not necessarily result in termination of service of the workman. It is only when the closure in accordance with the Act is effected that there would be termination of service. Closure and termination of service without following the procedure prescribed in the above mentioned Sections is inoperative, ineffective and invalid in law. For taking this view I place reliance upon the case titled as ***Maharashtra General Kamgar Union Vs. Glass Containers (Pvt. Ltd.) and another (1983) 1 LLJ 326 (Bom.)***

19. Except for the self-serving and oral testimony of RW-1 Smt. Sarbjit Kaur, who has merely stated in her chief examination regarding the initiation of the process of closure of the company in the year 2018, there is nothing on record to show that a notice in the prescribed manner stating the reasons for intended closure had been given. While under cross-examination RW-1 Smt. Sarbjit Kaur was categoric that no document regarding the closure of the factory had been placed on record. Therefore, it can safely be held that the respondent has failed to establish on

record that there was a closure of the unit of the respondent at Parwanoo. Faced with the situation, it was contended for the respondent by referring to the documents Mark RX-1 and Mark RX-2 that the same depict the closure of the unit at Parwanoo. This cannot be accepted. Mark RX-1 is merely an intimation to the Member Secretary, SWCA, Department of Industries, Parwanoo, District Solan, HP that the respondent was intending to close its factory at Parwanoo on account of financial difficulties. Mark RX-2 is merely a certificate issued by Assistant Engineer, Electrical Sub Division, HPSEBL, Parwanoo to the effect that the connection in the name of M/s Optima Industries at Plot No. 15, Sector-2, Parwanoo had been permanently disconnected. These documents nowhere go to show that there had indeed been a closure of the unit of the respondent at Parwanoo.

20. It was then contended for the respondent that full & final settlement amount stands already paid to the petitioner, as per Ex. R-2. This document would also not come to the rescue of the respondent in any manner, firstly for the reason that the same was never put to the petitioner in his cross-examination by the respondent. Even no question or any suggestion had been put to the petitioner by the respondent that full & final settlement amount stood paid to him. Secondly, as discussed above, since the respondent has failed to prove its plea of closure on record, this document pales into insignificance.

21. Since, in the case on hand, the respondent has failed to establish on record the closure in accordance with the Act, the petitioner/workman is entitled to be treated to have continued in service throughout. The transfer of the petitioner as per Mark PX-2 and the termination of his services thereafter on the basis of the closure of the Unit of the respondent at Parwanoo is held to be inoperative, ineffective and invalid in law. He is accordingly entitled to be reinstated in service with continuity in service and all consequential monetary benefits. Hence, this issue is answered in the affirmative and in favour of the petitioner.

Issue No. 3

22. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is answered in the negative and against the respondent.

Relief

23. As a sequel to my above discussion and findings on issues no. 1 and 2 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination *i.e.* during October, 2018 along-with all monetary benefits. The monetary benefits shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th Day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.

BEFORE YOGESH JASWAL, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 104 of 2019

Instituted on : 02.07.2019

Decided on : 29.04.2024

Lachhi Ram s/o Shri Jangeshu, P.O. Masulkhana, Tehsil Kasauli, District Solan, H.P.
. . *Petitioner*.

Versus

The Factory Manager M/s Optima Industries, Unit-II, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri A.K Negi, Legal Aid Counsel

For the Respondent : Shri V.S. Jaswal, Advocate

AWARD

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

"**Whether implied termination of the services of Shri Lachhi Ram s/o Shri Jangeshu, P.O. Masulkhana, Tehsil Kasauli, District Solan, H.P. by way of transferring him from Parwanoo Unit, District Solan to Kundli Unit, District Sonipat Haryana by the management M/s Optima Industries, Unit-II Sector-2, Parwanoo, Tehsil Kasauli, District Solan, HP during October, 2018 without complying with the provisions of Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, seniority, amount of back-wages, past service**

benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was working as System Preparer with the respondent *w.e.f.* 05.10.2010 till 30.11.2017 at pay band of ₹ 4,100/- per month, which was increased to ₹8709/- per month. His conduct and performance was satisfactory as he was never served with any show cause notice, charge-sheet, warnings or complaints. In order to put pressure upon the petitioner and other workers, he along-with other workers had been transferred to Sonipat (Haryana) and when they had shown their inability to work there, the gate of the company had been locked for them, thereby terminating their services. Due to illegal act of the respondent, the petitioner suddenly lost his earnings, he being the sole bread earner of the family. The petitioner had gone pillar to post for his reinstatement, but of no avail. He was stated to be retrenched by adopting illegal procedure by the company. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability, jurisdiction, cause of action, the petitioner having not approached the Court with clean hands and estoppel. On merits, it is admitted that the petitioner was appointed as System Preparer and Fixer on 05.10.2010. It is averred that the process for closure of Unit-II at Parwanoo had been started in the month of September, 2018 and in order to accommodate the petitioner and to maintain the seniority of the employees, the transfer order dated 19.09.2018 had been issued to him, but he had not joined his duties at his new place of posting and had tendered his resignation. The respondent had also informed the Member Secretary, SWCA, Department of Industries, Parwanoo regarding the closure on 05.03.2020. It is denied that the petitioner and other workers had been transferred to Sonipat in order to put pressure upon them. All the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) were stated to have been complied with. The respondent has prayed for the dismissal of the claim petition.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 30.08.2022:

1. Whether the termination of the services of the petitioner by way of transferring him from Parwanoo Unit to Kundli Unit, during October, 2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified as alleged? If so, what relief of service benefits, the petitioner is entitled to? . . *OPP*.

2. Whether the present petition is neither competent nor not maintainable, as? . . *OPR*.

3. Relief

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

8. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No.1 : Yes

Issue No. 2 : No

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

REASONS FOR FINDINGS

Issue No. 1

10. To substantiate his case, the petitioner, namely, Shri Lachhi Ram has appeared in the witness box as (PW-1) and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence his appointment letter as Ex. P-1, correction in salary letter as Ex. P-2, demand notice as Ex. P-3, letter dated 07.12.2018 as Ex. P-4, notice as Mark PX-1 copy of transfer letter as Mark PX-2 and demand notice dated 25.10.2018 as Mark PX-3.

11. In cross-examination, he denied that he had resigned from the job voluntarily. He stated that he had worked with the respondent company *w.e.f.* 2010 to 2017. He feigned ignorance that the company had started the process for closure in the year 2019. He admitted that he was transferred to Sonipat Unit from Parwanoo Unit and that he had not joined there. He denied that he had intentionally violated the transfer orders. He also denied that the company had rightly terminated his services due to his non-joining at the transferred place.

12. The respondent on the other hand examined one Ms. Sarabjit Kaur, Management Representative, as RW-1. Apart from tendering her affidavit by way of evidence as Ex. RW-1/A, which is nothing but a reiteration of facts mentioned in the reply, she has placed on record authority letter as Ex. R-1, full and final settlement as Ex. R-2, transfer letter as Ex. R-3, appointment letter as Ex. R-4, letters dated 06.03.2020 and 24.06.2020 as Mark RX-1 and Mark RX-2 and resignation letter as Mark RX-3.

13. In cross-examination, she admitted that the petitioner had worked with the respondent with honesty and sincerity for more than eight years. She further admitted that the petitioner was getting his annual increment regularly. She denied that no notice of change of work place had been given to the petitioner. She further denied that the services of the petitioner had been retrenched on account of excess labour. Volunteered that, he was transferred as the factory was closed. She admitted that no document regarding the closure of factory has been placed on record. She denied

that the petitioner was not paid the full & final settlement amount. She further denied that the resignation of the petitioner had been obtained under duress and by applying force.

14. Admittedly, the services of the petitioner had been engaged by the respondent as a System Preparer and Fixer *w.e.f.* 05.10.2010, *vide* appointment letters Ex./ P-1 and Ex. P-4. It is not in dispute that the petitioner had been transferred to another Unit at Sonipat (Haryana), vide transfer order Ex. R-3 and that his services have been terminated on account of closure of the Unit at Parwanoo. The respondent in its reply has specifically mentioned that the process of closure of Unit-II at Parwanoo had been started in the month of September, 2018 and to accommodate the petitioner, his services were transferred to another Unit at Sonipat (Haryana), but as he had failed to join his duties at the transferred place, his services were terminated on account of closure by paying full and final payment of ₹72,158/-. In addition to this, a plea has also been taken that the petitioner had tendered his resignation.

15. In essence the dispute does not *per se* relate to the termination simplicitor, but to the closure of the unit at Parwanoo, which ultimately led to the termination of the services of the petitioner. The reference could have been more happily worded by including the real dispute between the parties relating to the closure of the unit, which firstly led to the transfer and thereafter to the termination of the services of the petitioner. No doubt the jurisdiction of the Tribunal/Labour Court is to be confined to the terms of reference, but at the same time it is empowered to go into the incidental issues. Since, the respondent has set up a case that the termination of services of the petitioner was the result of the closure of the unit at Parwanoo, which though has not been referred to, this Court can still venture into such dispute. For taking this view I am fortified by the judgment rendered by the Hon'ble Supreme Court in case titled as ***Tata Iron and Steel Company Ltd., Vs. State of Jharkhand and Others (2014) 1 SCC 536***.

16. Since, in the case on hand the respondent is seeking to justify the retrenchment of the petitioner on the ground of closure of the Unit at Parwanoo, therefore, in order to come to the conclusion, whether or not the termination was justified, this Tribunal necessarily has to first decide whether or not there was a closure. In case titled as ***J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87***, the Hon'ble Supreme Court has observed that where the employer is seeking to justify the retrenchment on the ground of closure of a section of the plant, in such circumstances the question whether there was a closure and whether the same was bonafide, although was not referred to the Industrial Tribunal, could be decided by it.

17. Section 25-FFA of the Act requires the employer intending to effect closure of an undertaking to give notice. A closure must be preceded by giving 60 days' notice in the prescribed manner stating the reasons for intended closure. The object of this Section is to prevent a sudden closure. The notice of 60 days is required to be given to the appropriate Government presumably to consider whether it should take any measure in respect of such intended closure.

18. Closure in violation of Sections 25-FFA and 25-FFF does not result in termination of service. These Sections stipulate the need for a notice and payment of compensation in accordance with the provisions of Section 25-F, as if the workman is retrenched when the undertaking is closed. These provisions make it clear that closure which only amounts to the employer drawing the shutters need not necessarily result in termination of service of the workman. It is only when the closure in accordance with the Act is effected that there would be termination of service. Closure

and termination of service without following the procedure prescribed in the above mentioned Sections is inoperative, ineffective and invalid in law. For taking this view I place reliance upon the case titled as ***Maharashtra General Kamgar Union Vs. Glass Containers (Pvt. Ltd.) and another (1983) 1 LLJ 326 (Bom.)***

19. Except for the self-serving and oral testimony of RW-1 Smt. Sarbjit Kaur, who has merely stated in her chief examination regarding the initiation of the process of closure of the company in the year 2018, there is nothing on record to show that a notice in the prescribed manner stating the reasons for intended closure had been given. While under cross-examination RW-1 Smt. Sarbjit Kaur was categoric that no document regarding the closure of the factory had been placed on record. Therefore, it can safely be held that the respondent has failed to establish on record that there was a closure of the unit of the respondent at Parwanoo. Faced with the situation, it was contended for the respondent by referring to the documents Mark RX-1 and Mark RX-2 that the same depict the closure of the unit at Parwanoo. This cannot be accepted. Mark RX-1 is merely an intimation to the Member Secretary, SWCA, Department of Industries, Parwanoo, District Solan, HP that the respondent was intending to close its factory at Parwanoo on account of financial difficulties. Mark RX-2 is merely a certificate issued by Assistant Engineer, Electrical Sub Division, HPSEBL, Parwanoo to the effect that the connection in the name of M/s Optima Industries at Plot No. 15, Sector-2 Parwanoo had been permanently disconnected. These documents nowhere go to show that there had indeed been a closure of the unit of the respondent at Parwanoo.

20. Although, the respondent by making a reference to Mark RX-3 has tried to demonstrate that the petitioner had tendered his resignation voluntarily, but the same cannot be taken into consideration firstly for the reason that only a photocopy of the letter has been placed on record, which is merely marked. Neither the original was produced nor it was proved on record by the respondent. Secondly, this document has specifically been denied to be wrong by the petitioner in his cross-examination. Then, it is the specific case of the respondent that the services of the petitioner had been terminated on account of closure. Had it been so that the petitioner had tendered his resignation, such a stand would have only been taken by the respondent in its pleadings and evidence. Further, if indeed the petitioner had tendered his resignation, why he would have raised a demand notice and come to the Court by way of this reference.

21. It was then contended for the respondent that full & final settlement amount stands already paid to the petitioner, as per Ex. R-2. This document would also not come to the rescue of the respondent in any manner, firstly for the reason that the same was never put to the petitioner in his cross-examination by the respondent. Even no question or any suggestion had been put to the petitioner by the respondent that full & final settlement amount stood paid to him. Secondly, as discussed above, since the respondent has failed to prove its plea of closure on record, this document pales into insignificance.

22. Since, in the case on hand, the respondent has failed to establish on record the closure in accordance with the Act, the petitioner/workman is entitled to be treated to have continued in service throughout. The transfer of the petitioner as per Ex. R-3 and the termination of his services thereafter on the basis of the closure of the Unit of the respondent at Parwanoo is held to be inoperative, ineffective and invalid in law. He is accordingly entitled to be reinstated in service with continuity in service and all consequential monetary benefits. Hence, this issue is answered in the affirmative and in favour of the petitioner.

Issue No. 2

23. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The

present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is answered in the negative and against the respondent.

Relief

24. As a sequel to my above discussion and findings on issues no. 1 and 2 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination i.e. during October, 2018 along-with all monetary benefits. The monetary benefits shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th Day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Shimla, H.P.

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

Application Number	:	151 of 2020
Instituted on	:	29.12.2020
Decided on	:	30.04.2024

Jarnail Singh s/o Shri Mehar Singh, r/o Village Sibel Majra, P.O. Nurpur Bedi, Tehsil Anandpur, District Roop Nagar (Punjab). . . *Petitioner*.

Versus

M/s Issolloyd Engineering's Technologies Ltd., Kishanpura, Tehsil Baddi, District Solan, H.P. through its General Manager/Factory Manager. . . *Respondent*.

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

For the Petitioner	:	Shri Chetan Sharma, Advocate
For the Respondent	:	Shri Rajiv Sharma, Advocate

AWARD

The present claim petition has been filed by the petitioner directly before this Court under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. Key facts necessary for the disposal of the present claim petition as alleged by the petitioner are that on 09.05.2008 he had been initially engaged as Hydra Operator G-II (Mechanical) in the Maintenance Department and had worked as such continuously till 31.05.2018. His services had been terminated illegally by imposing closure *w.e.f.* 01.06.2018 just to harass the gullible workers by adopting a method of pick and choose. The procedure was flouted as no notice or intimation had been given to the petitioner. The workers of the respondent company had formed a union known as Issallayd Engineering Technologies Ltd. Workers Union, which was duly registered and the petitioner being a member of workers union had been targeted by the respondent and victimized in the garb of illegal closure. The closure as imposed by the respondent was not applicable to the services of petitioner as the same has been done in violation of the provisions of Sections 25-FFA and 25-FFF of the Act. The entire components in the factory are still working and fresh workers have also been engaged. The work for which the petitioner was engaged is still available in the respondent company. The termination of the services of the petitioner is stated to be in violation of the provisions of Sections 25-G, 25-H, 25-N and 25-O of the Act. His legal and legible dues were not paid to him. He raised the demand notice, but the conciliation could not be materialized, hence the present claim petition under Section 2-A of the Act has been directly filed before this Court.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability and that the petitioner had not approached the Court with clean hands. On merits, it is averred that the respondent had acted as per the law laid down under Section 25-FFA of the Act and had issued a notice to the Secretary Government of Himachal Pradesh, Labour Department, H.P Shimla in the shape of Form "W" on 02.04.2018 and had also submitted a copy of the closure notice in the office of Labour Commissioner, Labour Officer, Baddi, Labour Inspector, Nalagarh and District Employment Exchange, Solan. The Labour Officer, Baddi had called a meeting of the workers union and the respondent/management and after several rounds of meetings with both the parties, he had filed his report in the office of Joint Labour Commissioner, Shimla. On 02.04.2018, the respondent/ management pasted a notice on the board of the factory for the information of workers and staff members of AE unit. Since, the petitioner was working in the Acoustic Enclosure Unit (AE Unit), hence, his services stood terminated as per law laid down under Section 25-FFA of the Act. Full and final financial dues amounting to ₹ 2,52,532/- have been paid to the petitioner. The order of closure and termination of the services of the petitioner by the respondent are legal and justified in the eyes of law. It is denied that there is no unit system in the respondent company. No victimization has been done. The demand notice of the petitioner was returned by the Labour Officer, Baddi with the directions to file the same after making the necessary correction, but no corrected notice had been filed by the petitioner. By denying the other allegations, the respondent has prayed for the dismissal of the claim petition.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 23.06.2022:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 31.05.2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . *OPP*.

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

3. Relief

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunity subject to costs, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel appearing for the respondent, as per his statement made at bar, did not intend to lead any evidence for the respondent.

8. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No. 1	:	Negative
Issue No. 2	:	Negative
Relief	:	Reference is answered in the negative, as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent on 31.05.2018 by violating the provisions of the Act. It was asserted that the petitioner had been engaged as Hydra Operator G-II (Mechanical) in the Maintenance Department on 09.05.2008 by the respondent and had continuously worked till 31.05.2018. His services had been terminated illegally by imposing closure *w.e.f.* 01.06.2018. Juniors to him have been retained and fresh workers were engaged.

These averments were required to be established on record by the petitioner by way of ocular and / or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as Hydra Operator G-II (Mechanical).

12. It was contended by the learned Counsel appearing for the respondent that the retrenchment of the petitioner was on the ground of bonafide closure of the unit, and which closure was there in compliance of the provisions of Sections 25-FFA and 25-FFF of the Act. However, the case of the petitioner is that the closure was without following the procedure prescribed in the above mentioned Sections, hence, the termination of the petitioner was inoperative, ineffective and invalid in law.

13. Sections 25-FFA and 25-FFF stipulate the need for a notice and payment of compensation in accordance with the provisions of Section 25-F, as if the workman is retrenched when the undertaking is closed. It is only when the closure in accordance with the Act is effected that there would be termination of service. As per the contents of the reply filed by the respondent and the documents annexed therewith, it is apparent that there had been issuance of notice as provided under Section 25-FFA of the Act and compensation as required under Section 25-FFF stood paid to the petitioner.

14. So, it was required of the petitioner to establish on record that the closure and termination of his services was without following the procedure as prescribed in the above mentioned Sections. No oral or documentary evidence has been led on record by the petitioner to establish that the closure was in violation of the provisions of Sections 25-FFA and 25-FFF of the Act, thereby rendering the termination of his services inoperative, ineffective and invalid in law.

15. The petitioner in his statement of claim has merely alleged that the entire components in the factory were still working. No persons junior to him, who are still working, were named in the statement of claim, nor there is any seniority list placed and exhibited on record by the petitioner to show that persons junior to him are still serving the respondent. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

16. No doubt, the petitioner has pleaded that the respondent had violated the provisions of Section 25-H of the Act. But, however, the statement of claim is nonexistent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. Hence, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

17. Similarly, in the absence of any ocular or documentary evidence on the part of the petitioner on record, it cannot be said that the provisions of Sections 25-N and 25-O of the Act have also been violated by the respondent.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, this issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned counsel appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-*,*
Labour Court Shimla, H.P.

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

Application Number : 02 of 2021

Instituted on : 12.01.2021

Decided on : 30.04.2024

Rakesh Kumar s/o late Shri Amar Singh, r/o Village Majiyar, P.O. Shahpur, District Kangra, H.P. . . *Petitioner*.

Versus

M/s Issolloyd Engineering's Technologies Ltd., Kishanpura, Tehsil Baddi, District Solan, H.P. through its General Manager/Factory Manager. . . *Respondent*.

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

For the Petitioner : Shri Chetan Sharma, Advocate

For the Respondent : Shri Rajiv Sharma, Advocate

AWARD

The present claim petition has been filed by the petitioner directly before this Court under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. Key facts necessary for the disposal of the present claim petition as alleged by the petitioner are that on 07.05.2008 he had been initially engaged as JR Welder-cum-Fitter (Mechanical) in the Maintenance Department and had worked as such continuously till 31.05.2018. His services had been terminated illegally by imposing closure *w.e.f.* 01.06.2018 just to harass the gullible workers by adopting a method of pick and choose. The procedure was flouted as no notice or intimation had been given to the petitioner. The workers of the respondent company had formed a union known as Issallayd Engineering Technologies Ltd. Workers Union, which was duly registered and the petitioner being a member of workers union had been targeted by the respondent and victimized in the garb of illegal closure. The closure as imposed by the respondent was not applicable to the services of petitioner as the same has been done in violation of the provisions of Sections 25-FFA and 25-FFF of the Act. The entire components in the factory are still working and fresh workers have also been engaged. The work for which the petitioner was engaged is still available in the respondent company. The termination of the services of the petitioner is stated to be in violation of the provisions of Sections 25-G, 25-H, 25-N and 25-O of the Act. His legal and legible dues were not paid to him. He raised the demand notice, but the conciliation could not be materialized, hence the present claim petition under Section 2-A of the Act has been directly filed before this Court.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability and that the petitioner had not approached the Court with clean hands. On merits, it is averred that the respondent had acted as per the law laid down under Section 25-FFA of the Act and had issued a notice to the Secretary Government of Himachal Pradesh, Labour Department, H.P Shimla in the shape of Form "W" on 02.04.2018 and had also submitted a copy of the closure notice in the office of Labour Commissioner, Labour Officer, Baddi, Labour Inspector, Nalagarh and District Employment Exchange, Solan. The Labour Officer, Baddi had called a meeting of the workers union and the respondent/management and after several rounds of meetings with both the parties, he had filed his report in the office of Joint Labour Commissioner, Shimla. On 02.04.2018, the respondent/ management pasted a notice on the board of the factory for the information of workers and staff members of AE unit. Since, the petitioner was working in the Acoustic Enclosure Unit (AE Unit), hence, his services stood terminated as per law laid down under Section 25-FFA of the Act. Full and final financial dues amounting to ₹1,94,828/- have been paid to the petitioner. The order of closure and termination of the services of the petitioner by the respondent are legal and justified in the eyes of law. It is denied that there is no unit system in the respondent company. No victimization has been done. The demand notice of the petitioner was returned by the Labour Officer, Baddi with the directions to file the same after making the necessary correction, but no corrected notice had been filed by the petitioner. By denying the other allegations, the respondent has prayed for the dismissal of the claim petition.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 23.06.2022:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 31.05.2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . *OPP*.

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

3. Relief

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunity subject to costs, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel appearing for the respondent, as per his statement made at bar, did not intend to lead any evidence for the respondent.

8. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No. 1	:	Negative
Issue No. 2	:	Negative
Relief	:	Reference is answered in the negative, as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent on 31.05.2018 by violating the provisions of the Act. It was asserted that the petitioner had been engaged as Jr. Welder-cum-Fitter (Mechanical) in the Maintenance Department on 07.05.2008 by the respondent and he had continuously worked till 31.05.2018. His services had been terminated illegally by imposing closure *w.e.f.* 01.06.2018. Juniors to him have been retained and fresh workers were engaged.

These averments were required to be established on record by the petitioner by way of ocular and/ or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as Jr. Welder-cum-Fitter (Mechanical).

12. It was contended by the learned Counsel appearing for the respondent that the retrenchment of the petitioner was on the ground of bonafide closure of the unit, and which closure was there in compliance of the provisions of Sections 25-FFA and 25-FFF of the Act. However, the case of the petitioner is that the closure was without following the procedure prescribed in the above mentioned Sections, hence, the termination of the petitioner was inoperative, ineffective and invalid in law.

13. Sections 25-FFA and 25-FFF stipulate the need for a notice and payment of compensation in accordance with the provisions of Section 25-F, as if the workman is retrenched when the undertaking is closed. It is only when the closure in accordance with the Act is effected that there would be termination of service. As per the contents of the reply filed by the respondent and the documents annexed therewith, it is apparent that there had been issuance of notice as provided under Section 25-FFA of the Act and compensation as required under Section 25-FFF stood paid to the petitioner.

14. So, it was required of the petitioner to establish on record that the closure and termination of his services was without following the procedure as prescribed in the above mentioned Sections. No oral or documentary evidence has been led on record by the petitioner to establish that the closure was in violation of the provisions of Sections 25-FFA and 25-FFF of the Act, thereby rendering the termination of his services inoperative, ineffective and invalid in law.

15. The petitioner in his statement of claim has merely alleged that the entire components in the factory were still working. No persons junior to him, who are still working, were named in the statement of claim, nor there is any seniority list placed and exhibited on record by the petitioner to show that persons junior to him are still serving the respondent. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

16. No doubt, the petitioner has pleaded that the respondent had violated the provisions of Section 25-H of the Act. But, however, the statement of claim is nonexistent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. Hence, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

17. Similarly, in the absence of any ocular or documentary evidence on the part of the petitioner on record, it cannot be said that the provisions of Sections 25-N and 25-O of the Act have also been violated by the respondent.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, this issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned counsel appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
H.P. Industrial Tribunal-cum-*,*
Labour Court Shimla, H.P.

In the Court of Executive Magistrate, Ghumarwin, District Bilaspur (H.P.)

Chrisha Thakur d/o Shri Dalip Singh Thakur, r/o Ward No. 7, Dakri, P.O. and Tehsil Ghumarwin, Distt. Bilaspur, Himachal Pradesh Minor through her father Shri Dalip Singh Thakur

Versus

General Public

Application u/s 13(3) of Birth and death registration Act, 1969, Chrisha Thakur d/o Shri Dalip Singh Thakur, r/o Ward No. 7, Dakri, P.O. and Tehsil Ghumarwin, Distt. Bilaspur, Himachal Pradesh has preferred an application alongwith affidavit to the undersigned for correction of her name in her Aadhar card No. 8034 7603 2268 as Chrisha Thakur instead of Ojasvi. However the name of Chrisha Thakur has been also entered in her birth record, Pariwar Register and other record as Chrisha Thakur as per her record submitted by him/her.

Therefore, through proclamation the General Public is hereby informed the any person having any objection for correction of name mentioned may submit his/her objection in writing in the court within 30 days from the date of publication of this notice in Official Gazette, no. objection will be entertained after prescribed period and application will be decided accordingly.

Given under my hand and seal of the court on this 24th April, 2025.

Seal. Sd/-
Executive Magistrate,
Ghumarwin, Distt. Bilaspur (H.P.).

ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

ब मुकद्दमाः श्री हंसराज पुत्र श्री रामपाल, निवासी गांव सायर, डाकघर डोभा, तहसील सदर, जिला बिलासपुर (हि0प्र0)।

व

श्रीमती रेवती देवी पुत्री श्री दलीप सिंह, निवासी गांव बनौड़, डाकघर व तहसील निहरी, जिला मण्डी, (हि0प्र0)। ..प्रार्थीगण।

बनाम

आम जनता

विषय.––प्रार्थना–पत्र बराये विवाह पंजीकरण करवाने बारे।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री हंसराज पुत्र श्री रामपाल, निवासी गांव सायर, डाकघर डोभा, तहसील सदर, जिला बिलासपुर (हि0प्र0) व श्रीमती रेवती देवी पुत्री श्री दलीप सिंह, निवासी गांव बनौड़, डाकघर व तहसील निहरी, जिला मण्डी, (हि0प्र0) ने इस अदालत में संयुक्त तौर पर प्रार्थना–पत्र प्रस्तुत किया है, जिसके अनुसार उन्होंने व्यक्त किया है कि उन्होंने दिनांक 24–09–2024 को व्यवस्थित विवाह हिन्दू रीति रिवाजों के अनुसार किया है तथा इसकी प्रविष्टि समयबद्ध स्थानीय पंजीयक के रिकार्ड में दर्ज नहीं है अतः विलम्बित अवधि को मर्जित करके उक्त विवाह की प्रविष्टि हेतु सचिव, ग्राम पंचायत डोभा, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) को निर्देश दिये जावें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण के विवाह की प्रविष्टि दिनांक 24–09–2024 को दर्ज करने बारा यदि कोई एतराज हो तो वह दिनांक 09–05–2025 तक किसी भी कार्य दिवस पर असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा श्री हंसराज पुत्र श्री रामपाल, निवासी गांव सायर, डाकघर डोभा, तहसील सदर, जिला बिलासपुर (हि0प्र0) व श्रीमती रेवती देवी पुत्री श्री दलीप सिंह, निवासी गांव बनौड़, डाकघर व तहसील निहरी, जिला मण्डी, (हि0प्र0) के विवाह की प्रविष्टि करने हेतु सचिव, ग्राम पंचायत डोभा, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) को आदेश जारी कर दिये जाएंगे।

आज दिनांक 09–04–2025 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ है।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0प्र0)।

In the Court of Executive Magistrate-cum**-Tehsildar, Bhoranj,**
Distt. Hamirpur (H. P.)

In the matter of :

Devinder Kumar s/o Shri Jaswant Singh, Village and Post Office Dho, Tehsil Bhoranj, District Hamirpur (H.P.) . .*Applicant.*

Versus

General Public . . *Respondent*.

Subject.— Application u/s 13(3) of Birth & Death Registration Act, 1969.

Whereas, an application of Shri Devinder Kumar s/o Shri Jaswant Singh, Village and Post Office Dho, Tehsil Bhoranj, District Hamirpur (H.P.) alongwith affidavit and supporting documents has been received from Office of District Registrar (B & D)-cum-Chief Medical Officer, Hamirpur (H.P) *vide* letter No. HFW-HMR (ST-B & D) Del. 2024/2-8189 dated 04-04-2025 in which applicant Davinder Kumar has stated that he is born on 13-12-1984, but his date of birth is not registered in the Birth & Death register of Gram Panchayat Kanjian. The applicant prayed to register the date of birth in the record of Gram Panchayat Kanjian.

Now, therefore by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth *i.e.* 13-12-1984 of Devinder Kumar in Panchayat record may file their objections in writing or appear in person in this court on or before 08-05-2025 at 10.00 A.M., otherwise *ex-parte* proceeding will be initiated and orders or registration of date of birth will be passed accordingly.

Given under my hand and seal of the court on this 10th day of April, 2025.

Seal. Sd/-
Executive Magistrate,
Bhoranj, District Hamirpur (H.P.).

CHANGE OF NAME

I, Vandana Sankhayan d/o Roshan Lal and w/o Sh. Vinay Sankhayan, r/o Village Upper Nehra, P.O. Rajhana, New Shimla, District Shimla (H.P.)-171 009 have changed my name from Vandana Devi to Vandana Sankhayan after marriage. Henceforth, I shall be know as Vandana Sankhayan for all official and future purposes.

VANDANA SANKHAYAN
d/o Roshan Lal
w/o Sh. Vinay Sankhayan,
r/o Village Upper Nehra, P.O. Rajhana,
New Shimla, District Shimla (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।