



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 25 मार्च, 2025/04 चैत्र, 1946

हिमाचल प्रदेश सरकार

**LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT**

**NOTIFICATION**

*Dated, the 7th December, 2024*

**No. LEP-A006/7/2021-LEP.**—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

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(14485)

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

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	53/21	Seema	Director Him Institute Rural Dev.	14.09.2024
2.	54/21	Rahul	Director Him Institute Rural Dev.	14.09.2024
3.	55/21	Rajesh Jaswal	Director Him Institute Rural Dev.	14.09.2024
4.	08/20	Daljeet Singh	M/S Coslight India Telecom	16.09.2024
5.	09/20	Pargat Singh	-do-	-do-
6.	105/19	Khursheed Mohd.	-do-	-do-
7.	106/19	Manjeet Singh	-do-	-do-
8.	107/19	Chetan Kumar	-do-	-do-
9.	108/19	Anil Kumar	-do-	-do-
10.	65/21	Tara Devi	The D.F.O. Sunder Nagar	18.09.2024
11.	322/16	Amit Kumar	Pradhan, The Bilaspur Truck Opt.	18.09.2024
12.	93/19	Jai Ram	Principal Govt. Degree College Karsog	19.09.2024
13.	44/19	Brij Lal	Dir. Town & Country Planning	20.09.2024
14.	97/19	Bittu Ram	D.F.O. Chamba	27.09.2024
15.	92/19	Atma Ram	M/s Raheja Hydro Power Project	30.09.2024
16.	185/17	Virender Kumar	-do-	-do-
17.	184/17	Satish Kumar	-do-	-do-
18.	12/20	Rajeev Kumar	Chairman, Bishop P.K. Samantroy	30.09.2024
19.	109/21	Sunil Kumar	M/s Swiss Garnier Life Science	30.09.2024

By order,

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

**BEFORE THE NATIONAL LOK ADALAT  
HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the  
Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Ms. Seema d/o Sh. Dev Raj, r/o V.P.O. Rainta, Tehsil Dehra,  
District Kangra, H.P.

Respondent(s) : The Project Director, Him Institute for Rural Development TI,  
Office Near Petrol Pump, V.P.O. Khola, Tehsil Jawalamukhi,  
District Kangra, H.P.

Number of proceedings of the  
Labour Court-cum-Industrial  
Tribunal, Dharamshala : 53/2021

*Present:-*

Applicant : Smt. Ritu Bala, Ld. Legal Aid Counsel

Respondent : Sh. Puneet Tanu, Ld. Counsel

### **AWARD**

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Learned counsel for the applicant vide her separate statement recorded today 14.9.2024 wherein she has stated that petitioner has entered into compromise with the respondent and she does not want to continue with the reference/claim petition. She has authorized her to withdraw her case. According to the petitioner she has withdrawn the case of the petitioner. Therefore in view of the above statement the reference/claim petition is dismissed as withdrawn.

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

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member  
(**B.S. Pathania**)

Judicial Officer  
(**Parveen Chauhan**)

**Announced:**

**Date: 14.09.2024**

### **BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Rahul s/o Shri Sudershan, r/o V.P.O. Dhawala, Tehsil Dehra, District Kangra, H.P.

Respondent(s) : The Project Director, Him Institute for Rural Development TI, Office Near Petrol Pump, VPO Khola, Tehsil Jawalamukhi, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 54/2021

*Present:-*

Applicant : Sh. Vinesh Dhiman, Ld. Legal Aid Counsel

Respondent : Sh. Puneet Tanu, Ld. Counsel

**AWARD**

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

The petitioner has entered in a compromise and the statement is recorded today 14.9.2024. The petitioner has submitted that he has entered in a compromise with the respondent and he has settled the matter. According to him he does not want to continue with the reference/claim petition. Therefore in view of the above statement the reference/claim petition is dismissed as withdrawn.

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

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member  
(**B.S. Pathania**)

Judicial Officer  
(**Parveen Chauhan**)

**Announced:****Date: 14.09.2024****BEFORE THE NATIONAL LOK ADALAT  
HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Rajesh Jaswal s/o Shri Kulbhushan Singh, r/o Ward No. 9, V.P.O. Una, Tehsil & District Una, H.P.

Respondent(s) : The Project Director, Him Institute for Rural Development TI, Office Near Petrol Pump, V.P.O. Khola, Tehsil Jawalamukhi, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 55/2021

***Present:-***

Applicant : Sh. Anuj Soni, Ld. Legal Aid Counsel

Respondent : Sh. Puneet Tanu, Ld. Counsel

**AWARD**

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

The petitioner has entered in a compromise and the statement is recorded today 14.9.2024. The petitioner has submitted that he has entered in a compromise with the respondent and he has settled the matter. According to him he does not want to continue with the reference/claim petition.

Therefore in view of the above statement the reference/claim petition is dismissed as withdrawn.

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

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member  
(B.S. Pathania)

Judicial Officer  
(Parveen Chauhan)

**Announced:**

**Date: 14.09.2024**

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

Reference No. : 08/2020

Date of Institution : 21.1.2020

Date of Decision : 16.9.2024

Shri Daljeet Singh s/o Shri Mohinder Singh, r/o VPO Maharal, Tehsil Barsar, District Hamirpur, H.P. . . . *Petitioner.*

*Versus*

The Factory Manager/Employer, M/s Coslight India Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. . . . *Respondent.*

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

For the Petitioner : Sh. Vinesh Dhiman, Ld. Adv.

For Respondent : Sh. Neeraj Bhatnagar, Ld. Adv.

**AWARD**

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

“Whether termination of services of Shri Daljeet Singh s/o Shri Mohinder Singh, r/o V.P.O. Maharal, Tehsil Barsar, District Una, H.P. *w.e.f.* 19-11-2018 by the Factory Manager/Employer, M/S Coslight India Telecom Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. (after conducting domestic enquiry) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that petitioner/claimant was appointed as Forklift Operator in Maintenance department of respondent company on 9.4.2015 *vide* employee code CL-1085 which has been confirmed on 9.10.2015. It is asserted that petitioner has done his duty regularly, sincerely, honestly and with the dedication in the factory of the respondent company. On 19.8.2017 a worker of respondent company named as Ganesh expired after completing his night duty during the rainy season. Earlier the petitioner and other workers have requested the management by way of letter for providing bus service to the worker during rainy days as many workers came from remote area where they did not have proper roads and they had to cross the rainy Nalas. It is alleged Ganesh had lost his life due to the fact that there was negligence on the part of the company and the company was escaping from his liability even towards the family of deceased Ganesh. Petitioner and other workers had served notice to respondent company to provide benefits to the family of the deceased Ganesh. On 22.1.2018 the workers of the factory peacefully requested the management of the respondent company regarding the claim and benefits to the family of deceased Ganesh but the management refused to do so and the behaviour of the management was adamant and threatening towards the workers. The management has alleged to be in a mood of revenge and made the false allegations against the petitioner and other workers and thereafter setup biased internal inquiry. On 24.1.2018 Vice President of Factory with Labour Inspector had compromised the matter and the petitioner had shown his willingness to join the job. Despite this the management did not allow the petitioner to join factory again and on 26.10.2017 the services of the petitioner were suspended and false inquiry was initiated against him. It is further alleged that on the basis of false allegations show cause notices and charge sheet along-with suspension letters were sent to the claimant which were duly replied by him. On 12.2.2018 factory management without the consent of the petitioner appointed Mr. Anish J.P. an Inquiry Officer who has acting under the influenced of factory management and made a report in favour of the factory management without providing an opportunity to the petitioner and without appreciation of statement of the petitioner *vide* which ultimately on 19.10.2018 services of the petitioner were terminated. On 30.8.2018 factory management had again issued another show cause notice on the report of Inquiry Officer and ultimately on 19.11.2018 factory management illegally terminated the claimant/petitioner from his services without any sufficient reason. On 4.10.2018 claimant/petitioner again wrote a letter to the factory management to rejoin his services but in vain. It is alleged that the services of the petitioner were terminated on the basis of frivolous allegations but the management had continued the services of other employees after taking statements from them. It is alleged that the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act. The petitioner has prayed that the termination of his services may be declared as null and void and he may be granted all consequential benefits and other allowances, back wages, seniority, past service benefits and compensation.

3. In reply on behalf of the management company it is asserted that the petitioner has not narrated the true and original facts. It is further mentioned that petitioner had tried to manipulate the facts by raising false and frivolous allegation in the petition. In fact there did not exist any cause of action in favour of the petitioner. Petitioner joined the answering respondent factory on 9.4.2015 as a helper production on the gross salary of Rs.7612/- as per appointment letter on 9.4.2015. Due to continuous misbehaviour on his part with senior officers of the management factory had taken the decision to discontinue and terminate the services of the petitioner on the ground of misconduct and misbehaviour. On 31.8.2017 the petitioner at 10.45 to 12 afternoon had remained unattended his work and as such there was necessity in the factory of forak lift driver due this reason the work of factory was tampered and the factory had faced to financial loss. Thereafter the factory had sent a notice but in the reply the petitioner had not accepted his guilt however put questions to the management. On 22.1.2018 the petitioner and 10 other employees had started strike forcibly w.e.f. 22.1.2018 to 3.2.2018 and on 24.1.2018. It is alleged that petitioner had stopped Shri Mukesh Jain, Vice President in the main gate and thereafter adverse slogans against the factory officials including Sachin Thakur who was abused by shouting the words No Number Juti da Sachin

Thakur Kutti Da. It is alleged that the petitioner along-with other employees had used unparliamentarily language against the factory as well as instigated other employees was against Industrial Employment Standing Order (HP Rules 1973 and Amended Rule 1991/2013). The management thereafter issued additional charge-sheet and process was fixed and Manveer Singh put his presence being an representative of the factory but the petitioner had failed to attend the Inquiry Officer and he prayed time on phone and the matter was fixed on 2.4.2018. On 2.5.2018 the petitioner had put his reply before the Inquiry Officer and thereafter on 14.5.2018 he (petitioner) had not put his appearance before the Inquiry Officer and after that the case was fixed for 24.5.2018 for evidence and process before the Inquiry Officer was completed on different dates and the petitioner was found guilty regarding the charges levelled by the management. The report of the domestic enquiry was submitted by Inquiry Officer and petitioner was duly informed by the respondent company. Before taking action against the petitioner various notices were sent to him by registered post however he did not made reply and he was found liable for misconduct. In the light of these averments it is submitted that the petition is abuse of process of the court and the petitioner having suppressed the material facts is estopped from filing the petition. On merits the other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether termination of services of the petitioner *w.e.f.* 19-11-2018 by the respondent is/was illegal and unjustified, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the respondent/management? .. *OPP.*
3. Whether the petitioner has not approached this Tribunal with clean hands and suppressed material facts, as alleged. If so, its effects? .. *OPR.*
4. Whether the claim petition is not maintainable? .. *OPR.*
5. Whether this Tribunal has no jurisdiction to entertain and decide the claim petition? .. *OPR.*
6. Whether the claim petition is barred by limitation and laches? .. *OPR.*

Relief.

6. During the course of arguments it appears that essential issue between the parties regarding legality of the enquiry had not been framed. With the consent of both the parties and *vide* separate statements of learned counsel for both the parties the following issue no.1 was framed on 27.8.2024:—

1. (A) Whether the inquiry has been conducted against the petitioner by the respondent was legal, justified and in accordance with the principle of natural justice? .. *OPR.*
2. Relief.

7. Petitioner in order to prove his case has examined three witnesses including himself. PW1 Sanjeev Kumar is the brother of one Ganesh who has expired while returning from his duty in the factory. He has provided death certificate of his brother Ext.PW1/D and he (deceased Ganesh) had worked in Coslight Dhamandri and he died on 19th August, 2017. His brother used to go factory everyday there was a Nala. Earlier his duty time was 9 AM to 5:30 PM. Even however his duty was fixed 10 in the evening to 6 in the morning and while returning from his duty he had died while crossing the Nala. The death of his brother according to him was due to the negligence of company which had failed to provide conveyance. PW2 is Mohmad Aslam Khan Rathor. He has stated that he was posted as security officer of respondent establishment since March, 2016 till December, 2018. He has also stated regarding death of one Ganesh who was travelling on motorcycle after his duties when he was washed away in Swan River due to flood all of sudden. He has further stated that deceased could have been saved had his shift been changed from night to day. The company according to him did not give any financial benefits to the family of deceased. He also alleged that petitioner and others had never misbehaved with the establishment nor hurled any abuses. Petitioner and other were pressing their demands in a peaceful manner. Inquiry Officer in the case of the petitioner and others was Navin Thakur who was an advocate of the company. The petitioner has produced his affidavit Ext. PW3/A wherein he has reiterated the facts stated in the petition and also produced on record appointment letter Ext. PW3/B, increment letter Ext. PW4/C, another letter Ext. PW3/D, letter dated 24.1.2018 Ext. PW3/E.

8. Respondent in order to prove their case had examined Shri Anish J.P. as RW1. He has produced on record his affidavit Ext. RW1/A as well as inquiry report dated 20.10.2018 Ext. RW1/B and statements of as many as eight witnesses Exts. RW1C1 to C8. RW2 Shri Sachin Thakur is the HR Manager of the respondent company has produced his affidavit Ext. RW2/A. He has reiterated the facts stated in the reply. He also produced on record letters received from security officer Ext. RW2/B to Ext. RW2/E and appointment letter Ext. RW2/F. RW3 Shri Ravinder Singh, Security Officer, M/s Coslight India Telecom Pvt. Ltd. has stated on oath that the petitioner along-with other persons mentioned in the affidavit raised derogatory slogans against the respondent regarding which he wrote several letters to the management of M/s Coslight India Telecom Pvt. Ltd. RW4 Shri Latif Khan is another employee of the company who has stated on oath that he was provoked by the petitioner and other employees to go for strike with them. However he found that there was no issue of the death of Ganesh in the strike and factory management was ready to compensate the family member of deceased Ganesh, he did not support the illegal activities using filthy slogans against the management. RW5 Shri Manveer Singh presently working as HR Manager in Coslight India Telecom Pvt. Ltd. has also stated the facts mentioned in the reply. He produced his affidavit Ext. RW5/A. He also produced on record additional charge-sheet dated 12.2.2018 Ext. RW5/B, terms and conditions Ext. RW5/C, warning letter Ext. RW5/D, letter dated 31.8.2017 Ext. RW5/E, another warning letter Ext. RW5/F, charge along with termination dated 26.10.2017 Ext. RW5/G, another charge along with termination dated 16.10.2017 Ext. RW5/H, postal receipt Ext. RW5/J, warning letter Ext. RW5/K, domestic inquiry setup Ext. RW5/L, appointment of Inquiry Officer Ext. RW5/M, additional charge sheet Ext. RW5/N, appointment of management representative Ext. RW5/O, show cause notice Ext. RW5/P, acknowledgement Ext. RW5/Q, second show cause notice Ext. RW5/R, appointment of Inquiry Officer Ext. RW5/S, letter dated 7.7.2017 Ext. RW5/T, show cause notice Ext. RW5/U, postal receipt Ext. RW5/V, termination letter Ext. RW5/W, postal receipt Ext. RW5/X, charge sheet Ext. RW5/Y, letter dated 24.7.2018 Ext. RW5/Z, MOU Ext. RW5/Z1, authority letter Ext. RW5/AB and letter dated 15.5.2018 to deceased Ganesh Ext. RW5/AC, letter dated 29.5.2017 Mark-A.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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



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Issue No.1	: No
Issue No.1(A)	: Yes
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Unpressed
Issue No.6	: Unpressed
Relief	: The reference is decided Accordingly

### REASONS FOR FINDINGS

#### *Issue No.1(A)*

11. Learned counsel for the petitioner has argued that the termination of the services of the petitioner were illegal and unjustified. False allegations were made against the petitioner and false charge-sheet on wrong facts has been prepared. It is further argued that the Inquiry Officer Shri Anish J.P. was under the influence of the company. The inquiry report was prepared in favour of the factory management without appreciating statement of petitioner. The services of petitioner were terminated subsequently without any cause and without complying with the essential provisions of law. It is alleged that on 24.1.2018 the petitioner has shown willingness to join the company but he was not allowed to do so despite repeated requests.

12. Learned Counsel for the respondent company has submitted that the services of the petitioner were dispensed with after conducting just fair inquiry and on the charges of gross misconduct. The petitioner had joined the inquiry proceedings cross-examined the witnesses of company and produced evidence in deference. Once the charges were proved the report was prepared on the basis of evidence led in inquiry proceedings. Learned counsel has however argued that inquiry was just proper and termination of the services of the petitioner is legal and justified.

13. The onus of proving the issue 1(A) was upon the respondent who examined RW1 Shri Anish J.P. Inquiry Officer. The report Ext. RW1/B is also produced on record. Mere allegations against the Inquiry Officer are that the Inquiry Officer did not obtain consent of petitioner to accept him as Inquiry Officer and did not change the venue of inquiry despite request of the petitioner. It is also alleged that Inquiry Officer was representative of respondent company in other cases thus he was not a independent person. The record of inquiry produced on case file exhibits that the statement of witnesses is recorded before preparation of inquiry report, petitioner was given opportunity to cross-examine the complainant witnesses and produce evidence in defence.

14. RW1 Shri Anish J.P. has stated that he does not remember that he had sent notice to the petitioner informing him of his right to engage a counsel. He admitted that he did not obtain the consent of the petitioner to accept him as Inquiry Officer and despite the request of the petitioner, he did not change the venue of the inquiry. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in 2020 LLR 847 has held in para nos. 11 and 12 as follows:—

“11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice

is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :

- “28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

\* \* \* \*

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
  - (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
  - (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.
  - (4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
  - (b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said

violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*. The ultimate test is always the same, *viz.*, test of prejudice or the test of fair hearing, as it may be called.

- (5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, *i.e.*, between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, *i.e.*, in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, *viz.*, to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.
- (7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision”.

“12. The Supreme Court in the case of *State Vs. N.S. Gnaneswaran* reported in (2013) 3 SCC 594 has held as under :

“12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: *Jankinath Sarangi v. State of Orissa*, *State of U.P. v. Shatrughan Lal*, *State of A.P. v. Thakkidiram Reddy* and *Debotosh Pal Choudhury v. Punjab National Bank*.)”

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise,

no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards”.

15. It is aptly submitted on behalf the respondent company that Inquiry Officer was appointed by the Plant Head and no written objection was however made by the petitioner expressing his apprehension against the fairness of the Inquiry Officer. The petitioner was not receiving any notices and letters issued to him by the Inquiry Officer. Though a question is put to inquiry officer that he gave no written notice to petitioner to engage a counsel of his choice but it is not suggested that petitioner was not informed of such right even orally. Though it is alleged that petitioner had requested the Inquiry Officer to conduct an inquiry at factory office or any other place. This suggestion is denied by the Inquiry Officer Shri Anish J.P. Moreover no reason is cited in the pleadings or in the affidavit of the petitioner as to why he was adamant to shift the venue of inquiry. It is the right of petitioner to be duly represented and be a part of fair and just inquiry however he failed to prove the circumstance which had caused material prejudice to his right. With respect to legality of inquiry it is evident from the record that same was carried out in accordance with legal procedure and in compliance of principle of natural justice and petitioner attended the proceedings. Issue No. 1(A) is accordingly decided in favour of the respondent.

*Issues No.1 and 2*

16. A specific reference has been issued to this court to determine whether the termination of services of the petitioner Daljeet Singh (after conduct of domestic inquiry) without compliance of the provisions of the Industrial Disputes Act, 1947 is legal and justified. As sequel to the findings on issue No.1(A) above it is now established that the services of the petitioner were terminated on account of proved misconduct in a domestic inquiry.

17. Learned Counsel for the petitioner has vehemently argued that company management had acted in vindictive manner and services of petitioner along-with five other persons were terminated on various allegations and biased inquiry proceedings. The reason for the ill-will was protest made by the petitioner and other worker regarding the non grant of service benefits to the family of deceased worker Ganesh who expired in accident while returning from the company. The demand of workers to make available mode of conveyance/buses so that they can safely return to their home and hours of the work was the very base for dispensing the services of the petitioner and other workmen.

18. PW1 Shri Sanjeev Kumar has alleged that when the petitioner and other worker had demanded bus service and compensation the management had thrown them out. In cross-examination he has feigned ignorance to the suggestion that petitioner and other workers shouted in the company and raised slogans, closed the main gate of factory and went on illegal strike. PW2 Mohmad Aslam Khan Rathor has stated on oath that the petitioner and other had not misbehaved with the respondent establishment nor hurled any abuses. He mentions that Inquiry Officer was Navin Thakur who was Advocate of the company. It is however clear that the Inquiry Officer in the present case was Shri Anish J.P. and not Shri Navin Thakur. There is no evidence to show that Shri Anis J.P. was Advocate of the company. Complaint/report Ext.PA was actually written by him and contrary to his assertion that he was acting under pressure, he has admitted that till date he has not complained regarding pressure on him. He also signed documents containing contents of complaint Ext. PA during inquiry proceedings and did not take the plea of undue influence or pressure before the Inquiry Officer. In fact this witness admits that he has dispute with company thus his statement is to be taken with a pinch of salt. The petitioner has denied the charges made against him in the charge-sheet. He has shown ignorance and denied that he had been issued notices by the Inquiry Officer to appear before the inquiry. He did not allege that he was not given due opportunity to appear before inquiry and that inquiry was conducted in his absence deliberately. He

suppressed the fact that he refused to receive the notices issued by Inquiry Officer and witnessed were examined in his presence.

19. On the other hand RW1 Shri Anish J.P. has deposed on oath that he had conducted the inquiry and recorded the statements of eight witnesses which are Ext. RW1/C1 to C8. Nothing in his cross-examination before this court points towards any illegal and unfair procedure being admitted by him. The allegations made in the enquiry proceedings are stated on oath by RW2 Shri Sachin Thakur who also produced letters of security officer Ext. RW2/B to Ext. RW2/O. This witness also stated on oath that company had provided buses for the employees. The security officer RW3 Shri Ravinder Singh had deposed qua allegations of misconduct of the petitioner and other workers in his letter produced on record reported to the company. Nothing in his cross-examination would controvert the allegations raised by him. RW4 Shri Latif Khan another worker of company has alleged that being a worker of the company he was also provoked by the petitioner and others to go on illegal strike. He asserts that company was ready to compensate the family of deceased Ganesh and give job to his family member. RW5 Shri Manveer Singh has proved on record all the documents pertaining to the inquiry and various letters and correspondence with the petitioner. He has denied that Shri Anish J.P. was advocate of the company.

20. The evidence of both the parties reveals that the allegations of misconduct were proved in the inquiry proceedings on the basis of the statements of the witnesses the allegations made in the charge-sheet were defended by the petitioner. The legality of strike is also under the doubt as the witnesses examined by the respondent company have pointed that the petitioner and other workers had not only provoked the other workers but raised slogans and abuses against the management of the company. It is also stated by witnesses that company was taking steps to provide service benefits to the family members of deceased Ganesh. On the other hand the grave charges of misconduct stand proved against the petitioner. Contrary to the terms of reference since the termination of the petitioner was consequent to an inquiry and proof of misconduct there was no violation of the provisions of the Industrial Disputes Act by the respondent company. Issues no.1 and 2 are decided accordingly in the favour of respondent.

#### *Issue No.3*

21. The petitioner has suppressed that he took part in inquiry proceedings. It has been discussed while deciding issues no.1 and 2 above that the termination of the services of the petitioner was on the conclusion of an inquiry proceedings where the charges of misconduct stood proved against the petitioner. Consequently, the petitioner is not entitled for any benefits in the present case.

#### *Issue No.4*

22. The maintainability of the claim petition was challenged on the ground that petitioner had suppressed the actual material facts from this court while presenting the petition. The evidence revealed that just and fair inquiry was carried out by the company on the charges of misconduct against the petitioner and inquiry was attended by the petitioner himself. Since the termination of the services of the petitioner was in consequence to the proved charges of misconduct the present claim petition is not maintainable.

#### *Issues No.5 and 6*

23. The onus of proving these issues on the respondent. No specific evidence has been led to show that the adjudication of the claim was beyond the jurisdiction of this Tribunal nor the claim petition appears to be barred by limitation hence both issues shall be unpressed.

*Relief*

24. As a sequel to the above discussion on preliminary issue no.1(A) and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

25. The Hon'ble Supreme Court in *Uttar Pradesh State Road Transport Corporation versus GajadharNath* in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021) has held in para no. 5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 1947 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as *Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.*<sup>5</sup> held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

“32. From those decisions, the following principles broadly emerge :—

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or malafide.
- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
- (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
- (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.
- (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal.”

26. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

“[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

27. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

28. Now come up for hearing of both the parties.

Be called after respite.

16.9.2024 Present : Sh. Vinesh Dhiman, Ld. Counsel for the petitioner

Sh. Neeraj Bhatnagar, Ld. Counsel for respondent



29. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased and no option of petitioner was called before appointment of Inquiry Officer moreover undue harsh punishment has been imposed on the petitioner.

30. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and pollute the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **itled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

31. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed vis-a-vis the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs. 50,000/- to petitioner by way of compensation within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 16th day of September, 2024.

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

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

Reference No. : 09/2020  
Date of Institution : 21.1.2020  
Date of Decision : 16.9.2024

Shri Pargat Singh s/o Shri Gurmeet Singh, r/o V.P.O. Nangal Salangri, Tehsil & District Una, H.P. . . *Petitioner.*

*Versus*

The Factory Manager/Employer, M/s Coslight India Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Vinesh Dhiman, Ld. Adv.

For Respondent : Sh. Neeraj Bhatnagar, Ld. Adv.

**AWARD**

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

“Whether termination of services of Shri Pargat Singh s/o Shri Gurmeet Singh, r/o V.P.O. Nangal Salangri, Tehsil & District Una, H.P. *w.e.f.* 20-11-2018 by the Factory Manager/Employer, M/S Coslight India Telecom Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. (after conducting domestic inquiry) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that petitioner/claimant was appointed as Junior Operator in Production department of respondent company on 4.5.2015 *vide* employee code CL-1088 which has been confirmed on 4.11.2015. It is asserted that petitioner has done his duty regularly, sincerely, honestly and with the dedication in the factory of the respondent company. On 19.8.2017 a worker of respondent company named as Ganesh expired after completing his night duty during the rainy season. Earlier the petitioner and other workers have requested the management by way of letter for providing bus service to the worker during rainy days as many workers came from remote area where they did not have proper roads and they had to cross the rainy Nalas. It is alleged Ganesh had lost his life due to the fact that there was negligence on the part of the company and the company was escaping from his liability even towards the family of deceased Ganesh. Petitioner and other workers had served notice to respondent company to provide benefits to the family of the deceased Ganesh. On 22.1.2018 the workers of the factory peacefully requested the management of the respondent company regarding the claim and benefits to the family of deceased Ganesh but the management refused to do so and the behaviour of the management was adamant and threatening towards the workers. The management was alleged to be in a mood of revenge and made the false allegations against the petitioner and other workers and thereafter setup biased internal inquiry. On 24.1.2018 Vice President of Factory with Labour Inspector had compromised the matter and the petitioner had shown his willingness to join the job. Despite this the management did not allow the petitioner to join factory again and on 28.11.2017 the services of the petitioner were suspended and false inquiry was initiated against him. It is further alleged that on the basis of false allegations show cause notices and charge sheet along-with suspension letters were sent to the claimant which were duly replied by him. On 21.2.2018 factory management without the consent of the petitioner appointed Mr. Anish J.P. an Inquiry Officer who has acting under the influenced of factory management and made a report in favour of the factory management without providing an opportunity to the petitioner and without appreciation of

statement of the petitioner vide which ultimately on 20.10.2018 services of the petitioner were terminated. On 30.8.2018 factory management had again issued another show cause notice on the report of Inquiry Officer and ultimately on 20.11.2018 factory management illegally terminated the claimant/petitioner from his services without any sufficient reason. On 4.10.2018 claimant/petitioner again wrote a letter to the factory management to rejoin his services but in vain. It is alleged that the services of the petitioner were terminated on the basis of frivolous allegations but the management had continued the services of other employees after taking statements from them. It is alleged that the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act. The petitioner has prayed that the termination of his services may be declared as null and void and he may be granted all consequential benefits and other allowances, back wages, seniority, past service benefits and compensation.

3. In reply on behalf of the management company it is asserted that the petitioner has not narrated the true and original facts. It is further mentioned that petitioner had tried to manipulate the facts by raising false and frivolous allegation in the petition. In fact there did not exist any cause of action in favour of the petitioner. Petitioner joined the answering respondent factory on 4.5.2015 as a helper production on the gross salary of Rs.5712/- as per appointment letter on 4.5.2015. Due to continuous misbehaviour on his part with senior officers of the management factory had taken the decision to discontinue and terminate the services of the petitioner on the ground of misconduct and misbehaviour. On 26.10.2017 at 12 noon the petitioner came to Mr. Parthdas, AGM Plant Operation asked him to sanction half gate pass but the AGM refused to sanction the same as since morning petitioner was not at his respective department and he had taken many gate passes and leaves frequently. The petitioner thereafter shouted at the AGM and misbehaved by using slang words. A letter in this regard received from AGM by the HR Manager of the company. He has misbehaved with AGM and many senior officers of the company. It is further alleged that on 7.6.2017 and 8.6.2017 petitioner had provoked the other employees of the factory and shouted adverse slogans against the factory and management. This act and conduct of petitioner was allegedly violation of condition no.11 of the appointment letter of the petitioner. Thus he was liable for disciplinary action. On 28.10.2017 the petitioner remained absent from duty from 10:45 AM to 11:45 AM without permission. On 7.11.2017 the company's security department had reported that petitioner came along with five other employees of the factory shouting and started slogans against the factory HR management Nakk Babu, Sachin Thakur and Himanshu Sharma by uttering slogans Murdabad as well as Coslight Management Murdabad. Sachin GundaMurdabad, Sachin ki gunda gardi nahi chalegi with other slogans as mentioned in the complaint. Vide letter dated 10.6.2017 the petitioner admitted his guilt of raising slogans and also his mistake and thereafter on 11.9.2017 the petitioner again refused to run the pasting machine on asking of Engineer Plant Manufacturing Shri Vikas Sharma. Subsequently show cause notices dated 12.9.2017, 28.10.2017, 31.10.2017 and 21.2.2018 were issued to the petitioner and was duly received by him. The petitioner along-with other employees of the factory had gone on illegal strike from 22.1.2018 to 3.2.2018 and also on 24.1.2018. It is alleged that petitioner had stopped the employees of the factory from entry of main gate and thereafter adverse slogans against the factory officials including Sachin Thakur who was abused by shouting the words No Number Juti da Sachin Thakur Kutti Da. It is alleged that the petitioner along-with other employees had used unparliamentarily language against the senior officers of the factory. The management thereafter issued charge-sheet and additional charge-sheet to the petitioner where he appeared before the Inquiry Officer on 4.5.2018 putting forth his reply thereafter management has sent a letter to the petitioner to join the enquiry but he failed to join the inquiry. The report of the domestic enquiry was submitted by Inquiry Officer and petitioner was duly informed by the respondent company. Before taking action against the petitioner various notices were sent to him by registered post however he did not reply and he was found liable for misconduct. In the light of these averments it is submitted that the petition is abuse of process of the court and the petitioner having suppressed the material facts is estopped from filing the petition. On merits the other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether termination of services of the petitioner *w.e.f.* 20-11-2018 by the respondent is/was illegal and unjustified, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the respondent/management? .. *OPP.*
3. Whether the petitioner has not approached this Tribunal with clean hands and suppressed material facts, as alleged. If so, its effects? .. *OPP.*
4. Whether the claim petition is not maintainable? .. *OPP.*
5. Whether this Tribunal has no jurisdiction to entertain and decide the claim petition? .. *OPP.*
6. Whether the claim petition is barred by limitation and latches? .. *OPP.*

Relief.

6. During the course of arguments it appears that essential issue between the parties regarding legality of the enquiry had not been framed. With the consent of both the parties and *vide* separate statements of learned counsel for both the parties the following issue no.1 was framed on 27.8.2024:—

1. (A) Whether the inquiry has been conducted against the petitioner by the respondent was legal, justified and in accordance with the principle of natural justice? .. *OPP.*
2. Relief.

7. Petitioner in order to prove his case has examined three witnesses including himself. PW1 Sanjeev Kumar is the brother of one Ganesh who has expired while returning from his duty in the factory. He has provided death certificate of his brother Ext.PW1/D and he (deceased Ganesh) had worked in Coslight Dhamandri and he died on 19th August, 2017. His brother used to go factory everyday there was a Nala. Earlier his duty time was 9 AM to 5:30 PM. Even however his duty was fixed 10 in the evening to 6 in the morning and while returning from his duty he had died while crossing the Nala. The death of his brother according to him was due to the negligence of company who had failed to provide conveyance. PW2 is Mohmad Aslam Khan Rathor. He has stated that he was posted as security officer of respondent establishment since March, 2016 till December, 2018. He has also stated regarding death of one Ganesh who was travelling on motorcycle after his duties where had was washed away in Swan River due to flood all of sudden. He has further stated that deceased could have been saved had his shift been changed from night to day. The company according to him did not give any financial benefits to the family of deceased. He also alleged that petitioner and others had never misbehaved with the establishment nor hurled any abuses. Petitioner and other were pressing their demands in a peaceful manner. Inquiry Officer in the case of the petitioner and others was that Navin Thakur who was an advocate of the company. The petitioner has produced his affidavit Ext. PW3/A wherein he has reiterated the facts

stated in the petition and also produced on record appointment letter Ext. PW3/B, increment letter Ext. PW3/C, another letter Ext. PW3/D, letter dated 24.1.2018 Ext. PW3/E.

8. Respondent in order to prove their case had examined Shri Anish J.P. as RW1. He has produced on record his affidavit Ext. RW1/A as well as inquiry report dated 20.10.2018 Ext. RW1/B and statements of as many as eight witnesses Exts. RW1C1 to C8. RW2 Shri Sachin Thakur is the HR Manager of the respondent company has produced his affidavit Ext. RW2/A. He has reiterated the facts stated in the reply. He also produced on record letters received from security officer Ext. RW2/B to Ext. RW2/O and appointment letter Ext. RW2/P. RW3 Shri Ravinder Singh, Security Officer, M/s Coslight India Telecom Pvt. Ltd. has stated on oath that the petitioner along-with other persons mentioned in the affidavit raised as derogatory slogans against the respondent regarding which he wrote several letters to the management of M/s Coslight India Telecom Pvt. Ltd. RW4 Shri Latif Khan is another employee of the company who has stated on oath that he was provoked by the petitioner and other employees to go for strike with them. However he found that there was no issue of the death of Ganesh in the strike and factory management was ready to compensate the family member of deceased Ganesh, he did not support the illegal activities using filthy slogans against the management. RW5 Shri Manveer Singh presently working as HR Manager in Coslight India Telecom Pvt. Ltd. has also stated the facts mentioned in the reply. He produced his affidavit Ext. RW5/A. He also produced on record MOU Ext. RW5/B, various letters Ext. RW5/C to Ext. RW5/G, warning letter Ext. RW5/H, show cause notice Ext. Ext. RW5/J, acknowledge Ext. RW5/K, warning letter Ext. Ext. RW5/L, terms and conditions Ext. RW5/M, postal receipt Ext. RW5/N, terms and conditions Ext. RW5/O, returned envelopes Ext. RW5/P1 to P2, show cause notice Ext. RW5/Q, domestic inquiry setup Ext. RW5/R, appointment of management representative Ext. RW5/S, letter dated 19.12.2017 Ext. RW5/T, additional charge sheet Ext. RW5/U, undertaking regarding subsistence allowance Ext. RW5/V, postal receipt Ext. RW5/W, domestic inquiry dated 7.5.2017, 26.5.2017 Ext. RW5/X, postal receipt Ext. RW5/Y, letter dated 12.7.2018 Ext. RW5/Z, postal receipt Ext. RW5/Z1, termination letter dated 19.11.2018 Ext. RW5/Z2, postal receipt Ext. RW5/Z3, charge along with termination dated 7.11.2017 Ext. RW5/Z4, newspaper cutting regarding publication Ext. RW5/Z5, authority letter Ext. RW5/AB, letter dated 15.5.2018 to deceased Ganesh Ext. RW5/AC and letter dated 29.5.2017 Mark-A.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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

Issue No.1	: No
Issue No.1(A)	: Yes
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Unpressed
Issue No.6	: Unpressed
Relief	: The reference is decided Accordingly

**REASONS FOR FINDINGS***Issue No.1(A)*

11. Learned counsel for the petitioner has argued that the termination of the services of the petitioner were illegal and unjustified. False allegations were made against the petitioner and false charge-sheet on wrong facts has been prepared. It is further argued that the Inquiry Officer Shri Anish J.P. was under the influence of the company. The inquiry report was prepared in favour of the factory management without appreciating statement of petitioner. The services of petitioner were terminated subsequently without any cause and without complying with the essential provisions of law. It is alleged that on 24.1.2018 the petitioner has shown willingness to join the company but he was not allowed to do so despite repeated requests.

12. Learned Counsel for the respondent company has submitted that the services of the petitioner were dispensed with after conducting just fair inquiry and on the charges of gross misconduct. The petitioner had failed to join inquiry proceedings despite several notices received by way of publication also hence Inquiry Officer recorded the statement of witnesses and once the charges were proved the report was prepared on the basis of evidence led in inquiry proceedings. Learned counsel has however argued that inquiry was just proper and termination of the services of the petitioner is legal and justified.

13. The onus of proving the issue 1 (A) was upon the respondent who examined RW1 Shri Anish J.P. Inquiry Officer. The report Ext. RW1/B is also produced on record. Mere allegations against the Inquiry Officer are that the Inquiry Officer did not obtain consent of petitioner to accept him as Inquiry Officer and did not change the venue of inquiry despite request of the petitioner. It is also alleged that Inquiry Officer was representative of respondent company in other cases thus he was not a independent person. The record of inquiry produced on case file exhibits that show cause notices were sent to the petitioner by way of registered post. The charge-sheet and additional charge-sheet Ext. RW1/K and Ext. RW5/U were sent through registered letters on the address of the petitioner and so was the letter qua subsistence allowing Ext. RW5/B. The statement of witnesses is recorded before preparation of inquiry report. Various notices and correspondence letters were sent to petitioner by way of registered letters which were refused and avoided by him. Ultimately the proceedings of inquiry were carried out exparte from 29.12.2017 after waiting eight hours for the petitioner to appear till evening.

14. RW1 Shri Anish J.P. has stated that he does not remember that he had sent notice to the petitioner informing him of his right to engage a counsel. He admitted that he did not obtain the consent of the petitioner to accept him as Inquiry Officer and despite the request of the petitioner, he did not change the venue of the inquiry. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in 2020 LLR 847 has held in para nos. 11 and 12 as follows:—

“11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :

“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of

India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

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- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departamental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

- (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.
- (4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
- (b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.
- (5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that



matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, *i.e.*, between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, *i.e.*, in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/ Authority must always bear in mind the ultimate and overriding objective underlying the said rule, *viz.*, to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

- (7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision”.

“12. The Supreme Court in the case of State Vs. N.S. Ganeswaran reported in (2013) 3 SCC 594 has held as under :

- “12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (*Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v. Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.*)”

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards”.

15. It is aptly submitted on behalf the respondent company that Inquiry Officer was appointed by the Plant Head and no written objection was however made by the petitioner expressing his apprehension against the fairness of the Inquiry Officer. The petitioner was not receiving any notices and letters issued to him by the Inquiry Officer. Had he continuously appeared in the inquiry he was legally entitled to appointment of representative of his choice. The representative was never denied by the Inquiry Officer. Though it is alleged that petitioner had

requested the Inquiry Officer to conduct an inquiry at factory office or any other place. This suggestion is denied by the Inquiry Officer Shri Anish J.P. Moreover no reason is cited in the pleadings or in the affidavit of the petitioner as to why he was adamant to shift the venue of inquiry. It is the right of petitioner to be duly represented and be a part of fair and just inquiry however he himself chose to avoid the inquiry proceedings and is now estopped to question its legality. Thus with respect to legality of inquiry it is evident from the record that same was carried out in accordance with legal procedure and in compliance of principle of natural justice however petitioner avoided the proceedings. It is not the case of the petitioner that he was unaware of the inquiry proceedings as according to him he even went to the house of Inquiry Officer where he allegedly not asked to sit. Thus it is clear that despite having due knowledge of the inquiry proceedings the petitioner deliberately failed to join the same, now he cannot question legality of fairness of the inquiry proceedings. Issue No. 1(A) is accordingly decided in favour of the respondent.

*Issues No.1 and 2*

16. A specific reference has been issued to this court to determine whether the termination of services of the petitioner Pargat Singh (after conduct of domestic inquiry) without compliance of the provisions of the Industrial Disputes Act, 1947 is legal and justified. As sequel to the findings on issue No.1(A) above it is now established that the services of the petitioner were terminated on account of proved misconduct in a domestic inquiry.

17. Learned Counsel for the petitioner has vehemently argued that company management had acted in vindictive manner and services of petitioner along-with five other persons were terminated on various allegations and biased inquiry proceedings. The reason for the ill-will was protest was made by the petitioner and other worker regarding the non grant of service benefits to the family of deceased worker Ganesh who expired in accident while returning from the company. The demand of workers to make available mode of conveyance/buses so that they can safely return to their home and hours of the work was the very base for dispensing the services of the petitioner and other workmen.

18. PW1 Shri Sanjeev Kumar has alleged that when the petitioner and other worker had demanded bus service and compensation the management had thrown them out. In cross-examination he has feigned ignorance to the suggestion that petitioner and other workers shouted in the company and raised slogans, closed the main gate of factory and went on illegal strike. PW2 Mohmad Aslam Khan Rathor has stated on oath that the petitioner and other had not misbehaved with the respondent establishment nor hurled any abuses. He mentions that Inquiry Officer was Navin Thakur who was Advocate of the company. It is however clear that the Inquiry Officer in the present case was Shri Anish J.P. and not Shri Navin Thakur. There is no evidence to show that Shri Anis J.P. was Advocate of the company. Complaint/report Ext.PA was actually written by him and contrary to his assertion that he was acting under pressure, he has admitted that till date he has not complained regarding pressure on him. He also signed documents containing contents of complaint Ext. PA during inquiry proceedings and did not take the plea of undue influence or pressure before the Inquiry Officer. In fact this witness admits that he has dispute with company thus his statement is to be taken with a pinch of salt. The petitioner has denied the charges made against him in the charge-sheet. He has shown ignorance and denied that he had been issued notices by the Inquiry Officer to appear before the inquiry. He did not allege that he was not given due opportunity to appear before inquiry and that inquiry was conducted in his absence deliberately. He suppressed the fact that he refused to receive the notices issued by Inquiry Officer and deliberately refused to attend the inquiry proceedings.

19. On the other hand RW1 Shri Anish J.P. has deposed on oath that he had conducted the inquiry and recorded the statements of eight witnesses which are Ext. RW1/C1 to C8. Nothing in

his cross-examination before this court points towards any illegal and unfair procedure being admitted by him. The allegations made in the enquiry proceedings are stated on oath by RW2 Shri Sachin Thakur who also produced letters of security officer Ext. RW2/B to Ext. RW2/O. This witness also stated on oath that company had provided buses for the employees. The security officer RW3 Shri Ravinder Singh had deposed qua allegations of misconduct of the petitioner and other workers in his letter produced on record reported to the company. Nothing in his cross-examination would controvert the allegations raised by him. RW4 Shri Latif Khan another worker of company has alleged that being a worker of the company he was also provoked by the petitioner and others to go on illegal strike. He asserts that company was ready to compensate the family of deceased Ganesh and give job to his family member. RW5 Shri Manveer Singh has proved on record all the documents pertaining to the inquiry and various letters and correspondence with the petitioner. He has denied that Shri Anish J.P. was advocate of the company.

20. The evidence of both the parties reveals that the allegations of misconduct were proved in the inquiry proceedings on the basis of the statements of the witnesses the allegations made in the charge-sheet were not defend by the petitioner as he failed to appear before Inquiry Officer. The legality of strike is also under the doubt as the witnesses examined by the respondent company have pointed that the petitioner and other workers had not only provoked the other workers but stated slogans and abuses on the management of the company. It is also stated by witnesses that company was taking steps to ensure to provide benefits to the family members of deceased Ganesh. On the other hand the gross charges of misconduct stand proved against the petitioner. Contrary to the terms of reference since the termination of the petitioner was consequent to an inquiry and proof of misconduct there was no violation of the provisions of the Industrial Disputes Act by the respondent company. Issues no.1 and 2 are decided accordingly in the favour of respondent.

#### *Issue No.3*

21. The petitioner has suppressed that he failed to take part in inquiry proceedings despite knowledge. It has been discussed while deciding issues no.1 and 2 above that the termination of the services of the petitioner was on the conclusion of an inquiry proceedings where the charges of misconduct stood proved against the petitioner. Consequently, the petitioner is not entitled for any benefits in the present case.

#### *Issue No. 4*

22. The maintainability of the claim petition was challenged on the ground that petitioner had suppressed the actual material facts from this court while presenting the petition. The evidence revealed that just and fair inquiry was carried out by the company on the charges of misconduct against the petitioner and inquiry was avoided by the petitioner himself. Since the termination of the services of the petitioner consequence to the proved charges of misconduct the present claim petition is not maintainable.

#### *Issues No.5 and 6*

23. The onus of proving these issues on the respondent. No specific evidence has been led to show that the adjudication of the claim was beyond the jurisdiction of this Tribunal nor the claim petition appears to be barred by limitation hence both issues shall be unpressed.

#### *Relief*

24. As a sequel to the above discussion on preliminary issue no.1(A) and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

25. The Hon'ble Supreme Court in Uttar Pradesh State Road Transport Corporation versus Gajadhar Nath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021) has held in para no.5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 1947 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as *Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.* 5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

“32. From those decisions, the following principles broadly emerge :—

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
- (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
- (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.
- (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal.”

26. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

**“[11 A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

27. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionally to the misconduct alleged in the charge-sheet.

28. Now come up for hearing of both the parties.

Be called after respite.

16.9.2024 Present : Sh. Vinesh Dhiman, Ld. Counsel for the petitioner  
: Sh. Neeraj Bhatnagar, Ld. Counsel for respondent

29. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased and no option of petitioner was called before appointment of Inquiry Officer moreover undue harsh punishment has been imposed on the petitioner.

30. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and pollute the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

31. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has *wide* implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs. 50,000/- to petitioner by way of compensation within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 16th day of September, 2024.

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

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

Reference No. : 105/2019

Date of Institution : 19.10.2019

Date of Decision : 16.9.2024

Shri Kursheed Mohd. s/o Shri Anayat Ali, r/o V.P.O. Kuthera Kherla, Tehsil Amb, District Una, H.P. . . *Petitioner.*

*Versus*

The Factory Manager/Employer, M/s Coslight India Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Vinesh Dhiman, Ld. Adv.

For Respondent : Sh. Neeraj Bhatnagar, Ld. Adv.

**AWARD**

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

“Whether termination of services of Shri Kursheed Mohd. s/o Shri Anayat Ali, r/o V.P.O. Kuthera Kherla, Tehsil Amb, District Una, H.P. *w.e.f.* 20-09-2018 by the Factory Manager/Employer, M/s Coslight India Telecom Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. (after conducting domestic enquiry) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that petitioner/claimant was appointed as Operator in production department of respondent company on 5.1.2016 vide employee code CL-1150 and he worked continuously upto 20.9.2018. On 22.1.2018 the factory management had made false allegations on the claimant/petitioner along with some other employees/workers and started enquiry on these persons for their retrenchment. On 19.8.2017 a worker of respondent company named as Ganesh expired after completing his night duty during the rainy season. Earlier the petitioner and other workers have requested the management by way of letter for providing bus service to the worker during rainy days as many workers come from remote area where they did not have proper roads and they had to cross the rainy Nalas. It is alleged Ganesh had lost his life due to the fact that there was negligence on the part of the company and the company was escaping from his liability even towards the family of deceased Ganesh. Petitioner and other workers had served notice to respondent company to provide benefits to the family of the deceased Ganesh. On 22.1.2018 the workers of the factory peacefully requested the management of the respondent company regarding the claim and benefits to the family of deceased Ganesh but the management refused to do so and the behaviour of the management was adamant and threatening towards the workers. The management was alleged to be in a mood of revenge and made the false allegations against the petitioner and other workers and thereafter setup biased internal inquiry. On 24.1.2018 Vice President of Factory with Labour Inspector had compromised the matter and the petitioner had shown his willingness to join the job. Despite this the management did not allow the petitioner to join factory again and on 5.2.2018 the services of the petitioner were suspended and false inquiry was initiated against him. It is further alleged that on the basis of false allegations show cause notices and charge sheet along-with suspension letters were sent to the claimant which were duly replied by him. On 26.2.2018 factory management without the consent of the petitioner appointed Mr. Naveen Thakur an Inquiry Officer who has acting under the influenced of factory management and made a report in favour of the factory management without providing an opportunity to the

petitioner and without appreciation of statement of the petitioner vide which ultimately on 20.9.2018 services of the petitioner were terminated. On 30.8.2018 factory management had again issued another show cause notice on the report of Inquiry Officer and ultimately on 20.9.2018 factory management illegally terminated the claimant/petitioner from his services without any sufficient reason. On 4.10.2018 claimant/petitioner again wrote a letter to the factory management to rejoin his services but in vain. It is alleged that the services of the petitioner were terminated on the basis of frivolous allegations but the management had continued the services of other employees after taking statements from them. It is alleged that the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act. The petitioner has prayed that the termination of his services may be declared as null and void and he may be granted all consequential benefits and other allowances, back wages, seniority, past service benefits and compensation.

3. In reply on behalf of the management company it is asserted that the petitioner has not narrated the true and original facts. It is further mentioned that petitioner had tried to manipulate the facts by raising false and frivolous allegations in the petition. Infact there did not exist any cause of action in favour of the petitioner. Petitioner joined the answering respondent factory on 5.1.2016 as Office Operator on the gross salary of Rs.13298/- as per appointment letter on 5.1.2016. Due to continuous misbehaviour on his part with senior officers of the management factory had taken the decision to discontinue and terminate the services of the petitioner on the ground of misconduct and misbehaviour. On 22.1.2018 the petitioner had attended his work and made his attendance in the main gate of the factory and when entered into the main gate of the factory and thereafter the petitioner and other employees namely Manjeet Singh, Amit Kumar, Bali, Khurshet Mohdd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar and Gaurav Kishore had started stopping the other employees of the factory and forcibly on the main gate of the factory forced other employees to sit there and started unparliamentarily slogans against the management as well as instigated other employees for illegal strike. The petitioner in his speech expressed the words that on 23.1.2018 there was visit of an important customer in the factory and in order to create pressure on the management of the factory thereafter the petitioner and other employees sat on illegal strike which was continued till 3.2.2018. Thereafter the petitioner along with 5-6 employees of the factory started slogans against the factory HR management Nakk Babu, Sachin Thakur and Mukesh Jain by uttered slogans Murdabad as well as Coslight Management Murdabad. Sachin Gunda Murdabad, Sachin ki gundagardi nahi chalegi with other slogans as mentioned in the complaint. It is alleged that petitioner had stopped the employees of the factory from entry of main gate and thereafter adverse slogans against the factory officials including Sachin Thakur who was abused by shouting the words No Number Juti da Sachin Thakur Kutti Da. It is alleged that the petitioner along-with other employees had used unparliamentarily language against the senior officers of the factory. The management thereafter issued additional charge-sheet and process was fixed and Manveer Singh put his presence being a representative of the factory and put forwarded his reply. Domestic inquiry was duly conducted by the answering respondent by appointing Shri Naveen Thakur, Inquiry Officer. The report of the domestic enquiry was submitted by Inquiry Officer and petitioner was duly informed by the respondent company. Before taking action against the petitioner various notices were sent to him by registered post and he was found liable for misconduct. In the light of these averments it is submitted that the petition is an abuse of process of the court and the petitioner having suppressed the material facts is estopped from filing the petition. On merits the other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—



1. Whether termination of services of the petitioner *w.e.f.* 20.9.2018 by the respondent is/was illegal and unjustified, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the respondent/management? .. *OPP.*
3. Whether the petitioner has not approached this Tribunal with clean hands and suppressed material facts, as alleged. If so, its effects? .. *OPR.*
4. Whether the claim petition is not maintainable? .. *OPR.*
5. Whether this Tribunal has no jurisdiction to entertain and decide the claim petition? .. *OPR.*
6. Whether the claim petition is barred by limitation and laches? .. *OPR.*

Relief.

6. During the course of arguments it appears that essential issue between the parties regarding legality of the enquiry had not been framed. With the consent of both the parties and vide separate statements of learned counsel for both the parties the following issue no.1 was framed on 27.8.2024:—

- 1(A) Whether the inquiry has been conducted against the petitioner by the respondent was legal, justified and in accordance with the principle of natural justice? .. *OPR.*

2. Relief

7. Petitioner in order to prove his case has examined three witnesses including himself. PW1 Sanjeev Kumar is the brother of one Ganesh who has expired while returning from his duty in the factory. He has provided death certificate of his brother Ext.PW1/D and he (deceased Ganesh) had worked in Coslight Dhamandri and he died on 19th August, 2017. His brother used to go to factory everyday there was a Nala on the way. Earlier his duty time was 9 A.M. to 5:30 P.M. Even however his duty was fixed from 10 in the evening to 6 in the morning and while returning from his duty he had died while crossing the Nala. The death of his brother according to him was due to the negligence of company who had failed to provide conveyance. PW2 is Mohmad Aslam Khan Rathor. He has stated that he was posted as security officer of respondent establishment since March, 2016 till December, 2018. He has also stated regarding death of one Ganesh who was travelling on motorcycle and after his duties when he was washed away in Swan River due to flood all of sudden. He has further stated that deceased could have been saved had his shift being changed from night to day. The company according to him did not give any financial benefits to the family of deceased. He also alleged that petitioner and others had never misbehaved with the establishment nor hurled any abuses. Petitioner and other pressing their demands in a peaceful manner. Inquiry Officer in the case of the petitioner and others was Navin Thakur who was an advocate of the company. The petitioner has produced his affidavit Ext. PW3-A wherein he has reiterated the facts stated in the petition and also produced on record copy of letter dated 4.7.2016 Ext. PW3/B, performance letter for 2016-2017 Ext. PW3/C, copy of letter dated 15.12.2017 Mark-A, copy of compromise Mark-B, copy of letter dated 16.7.2018 Mark-C, copy of letter dated 4.10.2018 Mark-D and copy of letter dated 6.2.2018 Mark-E.

7. Respondent in order to prove their case had examined Shri Navin Thakur as RW1. He has produced on record his affidavit Ext. RW1/A as well as inquiry report Ext. RW1/B and

statements of as many as four witnesses Exts. RW1C1 to C4 and proceedings Ext.RW1/D. RW2 Shri Sachin Thakur is the HR Manager of the respondent company has produced his affidavit Ext. RW2/A. He has reiterated the facts stated in the reply. He also produced on record letters received from security officer Ext. RW2/B to Ext. RW2/L and appointment letter Ext. RW2/M. RW3 Shri Rarvinder Singh, Security Officer, M/s Coslight India Telecom Pvt. Ltd. has stated on oath that the petitioner along-with other persons mentioned in the affidavit has raised derogatory slogans against the respondent regarding which he wrote several letters to the management of M/s Coslight India Telecom Pvt. Ltd. has produced his lengthy evidence. RW4 Shri Latif Khan as another employee of the company who has stated on oath that he was provoked by the petitioner and other employees to go for strike with them. However since he found that there was no issue of the death of Ganesh in the strike and factory management was ready to compensate to the family member of deceased Ganesh, he did not support the illegal activities using filthy slogans against the management. RW5 Shri Manveer Singh presently working as HR Assistant Manager in Coslight India Telecom Pvt. Ltd. has also stated the facts mentioned in the reply. He produced his affidavit Ext. RW5/A. He also produced on record MOU Ext. RW5/B, letter dated 17.3.2018 Ext. PW5/C, charge sheet with termination dated 5.2.2018 Ext. PW5/D, terms and conditions Ext. PW5/E, show cause notice Ext. PW5/F, postal receipt Ext. PW5/G, show cause notice dated 24.8.2018 Ext. PW5/H, another show cause notice Ext. PW5/J, show cause notice Ext. PW5/K, domestic inquiry setup dated 26.2.2018 Ext. PW5/L, appointment of inquiry officer dated 27.2.2018 Ext. PW5/M, termination letter Ext. PW5/N, charge along with termination dated 5.2.2018 Ext. PW5/O, postal receipt Ext. PW5/P, authority letter Ext. PW5/Q, letter dated 15.5.2018 Ext. PW5/R and letter dated 29.5.2017 Mark-A.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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

Issue No.1 : No

Issue No.1(A) : Yes

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Relief : The reference is decided Accordingly

### REASONS FOR FINDINGS

#### *Issue No.1(A)*

12. Learned counsel for the petitioner has argued that the termination of the services of the petitioner were illegal and unjustified. False allegations were made against the petitioner and false charge-sheet on wrong facts was also prepared. The Inquiry Officer Naveen Thakur was under the

influence of the company. Enquiry report was prepared in favour of the factory management without appreciating statement of petitioner. The services of petitioner were terminated subsequently without any cause and without complying with the essential provisions of law. On 24.1.2018 the petitioner had shown his willingness to join the company but he was not allowed to do so despite repeated request.

13. Learned Counsel for the respondent has submitted that the services of the petitioner were dispensed after conducting a just inquiry on the charges of gross misconduct. The petitioner had joined the inquiry proceedings. He cross-examined complainant witness and also examined himself in his defence. The termination of petitioner was consequent to the inquiry report which was based on statement of witnesses. The procedure as per law was followed by the Inquiry Officer and there is no circumstances pointed in the inquiry proceedings which would indicate or imply that the principle of natural justice not complied with. Learned counsel for the respondent had further argued that inquiry proceedings being just and proper the termination of the petitioner was legal and justified and in violation of provisions of Industrial Disputes Act.

14. The onus of proving the issue no. 1(A) was on the respondent who examined RW1 Shri Naveen Thakur, Inquiry Officer. The report Ext. RW1/B has been produced on record. The allegations against the Inquiry Officer are that the Inquiry Officer did not obtain consent of petitioner to accept him as Inquiry Officer, that he had not given written notice to the petitioner regarding the fact that they could engage counsel of their choice during inquiry proceedings and that he was also representing the company in other cases. The record of proceeding of inquiry reveals that before cross-examining the complainant witness no objections seems to have been raised on behalf of petitioner that he was denied any representative of his choice for the said purpose. Witnesses of complainant was examined and then cross-examined by petitioner himself who appeared as witness in his defence. Though no notice in writing was actually given to the petitioner qua his right to engage his counsel. Inquiry Officer mentions in zimni order and report that he orally told the petitioner qua his right and no suggestion is made to RW1 Shri Naveen Thakur that he had not informed the petitioner of his right to engage his counsel orally also. The Inquiry Officer was appointed by Vice President of the company vide Ext. RW5/M who is also a disciplinary authority. RW1 Shri Naveen Thakur has denied that he looks after the other matters of the company and there is no evidence to prove these allegations. Inquiry Officer has denied that he continued inquiry in a manner suitable for the company. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in 2020 LLR 847 has held in para nos. 11 and 12 as follows:—

“11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :

“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable—a fact also emphasised by House of Lords in Council of Civil

Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post- decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, *i.e.*, whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (*i.e.*, adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

\* \* \* \*

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

- (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, *i.e.*, whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.
- (4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
- (b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*. The ultimate test is always the same, *viz.*, test of prejudice or the test of fair hearing, as it may be called.

- (5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, *i.e.*, between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, *i.e.*, in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, *viz.*, to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.
- (7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision”.
- “12. The Supreme Court in the case of State Vs. N.S. Ganeswaran reported in (2013) 3 SCC 594 has held as under :
- “12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v. Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.)”
13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards”.

16. The petitioner in the present case has failed to establish that he was condemned unheard. The management has produced on record all the inquiry proceeding duly participated by

the petitioner in order to show that petitioner had faced the just fair inquiry. There are no other specific allegations regarding the violation of principle of natural justice. The facts constituting the inquiry not being in confirmative with Model Standing Orders could be raised either in the pleading or evidence produced on behalf of petitioner. The prejudice if any caused to the petitioner with respect to procedure adopted by Inquiry Officer is not clearly proved on record. It cannot be held that inquiry faced by the petitioner is not conducted in just and fair manner. Accordingly issue No.1 (A) is decided in the favour of respondent.

#### Issues No.1 and 2

17. A specific reference has been issued to this court to determine whether the termination of services of the petitioner Kursheed Mohd. (after conduct of domestic inquiry) without compliance of the provisions of the Industrial Disputes Act, 1947 is legal and justified. As sequel to the findings on issue No.1 (A) above now established that the services of the petitioner were terminated on account of proved misconduct in a domestic inquiry.

18. Learned Counsel for the petitioner has vehemently argued that company management had acted vindictively as services of petitioner along-with five other persons were terminated on various allegations and biased inquiry proceedings. The reason for the ill-will was protest made by the petitioner and other worker regarding the non grant of service benefits to the family of deceased worker Ganesh who expired in accident while returning from the company and the demand of workers to make available mode of conveyance/buses so that they can safely return to their home after work.

19. PW3 Mohmad Aslam Khan Rathor has stated on oath that the petitioner and other had not misbehaved with the respondent establishment nor hurled any abuses. Though it has been alleged that the Inquiry Officer Shri Naveen Thakur was also doing that work of the company however there is no documentary evidence produced by the respondent in this regard. He admits that complainant/report Ext. PA was actually written by him and in the light of his assertion that he was acting under pressure, he has admitted that till date he has not made complaint regarding pressure on him. He also signed documents containing contents of complaint Ext. PA during inquiry proceedings and did not mention about undue pressure on him. In fact this witness admits that he had dispute with company thus his statement is to be taken with a pinch of salt.

20. The petitioner has denied the allegations of misconduct and on account his misconduct his services were terminated. He has denied that on 22.1.2018 he along with other employees namely Manjit Singh, Amit Kumar Bali, Khursheed Mohd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar, Gaurav Kishore started stopped the employees of the factory forcibly on the main gate of the factory and also forced other employees to sit there. He further denied that above mentioned persons started unparliamentarily slogans against the management and instigated other employees for strike. With regard to the allegations of abuses and slogans against the management he has denied the same. He also denied that on 10.6.2017 he had admitted his guilt. He admitted that inquiry was conducted by Shri Navin Thakur. Though he took part in the inquiry. He denied that letters were issued to the complainant. He feigned ignorance to the suggestion that statements were recorded by inquiry officer. The evidence of both parties reveals that the allegations of misconduct were proved in the enquiry proceedings on the basis of statement of the witnesses. The allegations made in the charge-sheet were defended by the petitioner and he cross-examined the complainant witnesses and also examined himself in defence. Legality of strike is also under the doubt as the witnesses RW3 Ravinder Singh and RW4 Latif Khan stated that company has taken steps to ensure benefits to the survivor of deceased Ganesh and that the services of the petitioner were terminated on account of proved misconduct in domestic inquiry. Since termination of the petitioner consequent to the inquiry proceedings and charges of misconduct the same cannot be

violative of the provisions of the Industrial Disputes Act by the respondent company. Issues no.1 and 2 are decided accordingly in the favour of respondent.

*Issue No. 3*

22. The petitioner has suppressed that he took part in inquiry proceedings and cross-examined the complainant witnesses. It has been discussed while deciding issues no.1 and 2 above that the termination of the services of the petitioner was on the conclusion of an inquiry proceedings where the charges of misconduct stood proved against the petitioner. Consequently, the petitioner is not entitled for any benefits in the present case.

*Issue No. 4*

23. The maintainability of the claim petition was challenged on the ground that petitioner had suppressed the actual material facts from this court while presenting the petition. The evidence revealed that just and fair inquiry was carried out by the company on the charges of misconduct against the petitioner. Since the termination of the services of the petitioner was in consequence to the proved charges of misconduct the present claim petition is not maintainable.

*Issues No. 5 and 6*

24. The onus of proving these issues on the respondent. No specific evidence has been led to show that the adjudication of the claim was beyond the jurisdiction of this Tribunal nor the claim petition appears to be barred by limitation hence both issues shall be unpressed.

*Relief*

25. As a sequel to the above discussion on preliminary issue no. 1 (A) and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

20. The Hon'ble Supreme Court in Uttar Pradesh State Road Transport Corporation versus GajadharNath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021) has held in para no. 5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 19474 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors. 5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

“32. From those decisions, the following principles broadly emerge :—

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if



applicable, and principles of natural justice. The enquiry should not be an empty formality.

- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or malafide.
- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
- (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
- (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.
- (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal.”

26. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

“[11 A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.--Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

27. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionally to the misconduct alleged in the charge-sheet.

28. Now come up for hearing of both the parties.

Be called after respite.

16.9.2024 Present : Sh. Vinesh Dhiman, Ld. Counsel for the petitioner

: Sh. Neeraj Bhatnagar, Ld. Counsel for respondent

29. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.

30. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **itled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

31. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 16th day of September, 2024.

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

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

Reference No. : 106/2019

Date of Institution : 19.10.2019

Date of Decision : 16.9.2024

Shri Manjeet Singh s/o Shri Gurcharan Singh, r/o V.P.O. Dhamandri, Tehsil & District Una, H.P. . . *Petitioner.*

*Versus*

The Factory Manager/Employer, M/s Coslight India Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Vinesh Dhiman, Ld. Adv.

For Respondent : Sh. Neeraj Bhatnagar, Ld. Adv.

**AWARD**

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

“Whether termination of Shri Manjeet Singh s/o Shri Gurcharan Singh, r/o V.P.O. Dhamandri, Tehsil & District Una, H.P. *w.e.f.* 15.09.2018 by the Factory Manager/Employer, M/s Coslight India Telecom Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. (after conducting domestic enquiry) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that petitioner/claimant was appointed as Helper in Maintenance department of respondent company on 8.5.2015 vide employee code CL-1093 which has been confirmed on 8.11.2015. It is asserted that petitioner has done his duty regularly, sincerely, honestly and with the dedication in the factory of the respondent company. On 19.8.2017 a worker of respondent company named as Ganesh expired after completing his night duty during the rainy season. Earlier the petitioner and other workers have requested the management by way of letter for providing bus service to the worker during rainy days as many workers came from remote area where they did not have proper roads and they had to cross the rainy Nalas. It is alleged Ganesh had lost his life due to the fact that there was negligence on the part of the company and the company was escaping from his liability even towards the family of deceased Ganesh. Petitioner and other workers had served notice to respondent company to provide benefits to the family of the deceased Ganesh. On 22.1.2018 the workers of the factory peacefully requested the management of the respondent company regarding the claim and benefits to the family of deceased Ganesh but the management refused to do so and the behaviour of the management was adamant and threatening towards the workers. The management was alleged to be in a mood of revenge and made the false allegations against the petitioner and other workers and thereafter setup biased internal inquiry. On 24.1.2018 Vice President of Factory with Labour Inspector had compromised the matter and the petitioner had shown his willingness to join the job. Despite this the management did not allow the petitioner to join factory again and on 5.2.2018 the services of the petitioner were suspended and false inquiry was initiated against him. It is further alleged that on the basis of false allegations show cause notices and charge sheet along-with suspension letters were sent to the claimant which were duly replied by him. On 26.2.2018 factory management without the consent of the petitioner appointed Mr. Naveen Thakur an Inquiry Officer who has acting under the influenced of factory management and made a report in favour of the factory management without providing an opportunity to the petitioner and without appreciation of statement of the petitioner *vide* which ultimately on 15.9.2018 services of the petitioner were terminated. On 30.8.2018 factory management had again issued another show cause notice on the report of Inquiry Officer and ultimately on 15.9.2018 factory management illegally terminated the claimant/petitioner from his services without any sufficient reason. On 4.10.2018 claimant/petitioner again wrote a letter to the factory management to rejoin his services but in vain. It is alleged that the services of the petitioner were terminated on the basis of frivolous allegations but the management had continued the services of other employees after taking statements from them. It is alleged that the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act. The petitioner has prayed that the termination of his services may be declared as null and void and he may be granted all consequential benefits and other allowances, back wages, seniority, past service benefits and compensation.

3. In reply on behalf of the management company it is asserted that the petitioner has not narrated the true and original facts. It is further mentioned that petitioner had tried to manipulate the facts by raising false and frivolous allegations in the petition. In-fact there did not exist any cause of action in favour of the petitioner. Petitioner joined the answering respondent factory on 8.5.2015 as a Helper Utility on the gross salary of Rs.5610/- as per appointment letter on 8.5.2015. Due to continuous misbehaviour on his part with senior officers of the management factory had taken the decision to discontinue and terminate the services of the petitioner on the ground of misconduct and misbehaviour. On 22.1.2018 the petitioner had attended his work and made his

attendance in the main gate of the factory and entered into the main gate of the factory and thereafter the petitioner and other employees namely Manjeet Singh, Amit Kumar, Bali, Khurshet Mohdd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar and Gaurav Kishore had started stopping the other employees of the factory and forcibly on the main gate of the factory forced other employees to sit there and started unparliamentarily slogans against the management as well as instigated other employees for illegal strike. The petitioner in his speech expressed the words that on 23.1.2018 there was visit of an important customer in the factory and in order to create pressure on the management of the factory thereafter the petitioner and other employees sat on illegal strike which was continued till 3.2.2018. Thereafter the petitioner along with 5-6 employees of the factory started slogans against the factory HR management Nakk Babu, Sachin Thakur and Mukesh Jain by uttered slogans Murdabad as well as Coslight Management Murdabad. Sachin Gunda Murdabad, Sachin ki gundagardi nahi chalegi with other slogans as mentioned in the complaint. It is alleged that petitioner had stopped the employees of the factory from entry of main gate and thereafter adverse slogans against the factory officials including Sachin Thakur who was abused by shouting the words No Number Juti da Sachin Thakur Kutti Da. It is alleged that the petitioner along-with other employees had used unparliamentarily language against the senior officers of the factory. The management thereafter issued additional charge-sheet and process was fixed and Manveer Singh put his presence being a representative of the factory and put forwarded his reply. Domestic inquiry was duly conducted by the answering respondent by appointing Shri Naveen Thakur, Inquiry Officer. The report of the domestic enquiry was submitted by Inquiry Officer and petitioner was duly informed by the respondent company. Before taking action against the petitioner various notices were sent to him by registered post and he was found liable for misconduct. In the light of these averments it is submitted that the petition is abused process of the court and the petitioner having suppressed the material facts is estopped from filing the petition. On merits the other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether termination of services of the petitioner *w.e.f.* 15.9.2018 by the respondent is/was illegal and unjustified, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the respondent/management? .. *OPP.*
3. Whether the petitioner has not approached this Tribunal with clean hands and suppressed material facts, as alleged. If so, its effects? .. *OPR.*
4. Whether the claim petition is not maintainable? .. *OPR.*
5. Whether this Tribunal has no jurisdiction to entertain and decide the claim petition? .. *OPR.*
6. Whether the claim petition is barred by limitation and laches? .. *OPR.*

Relief.

6. During the course of arguments it appears that essential issue between the parties regarding legality of the enquiry had not been framed. With the consent of both the parties and vide separate statements of learned counsel for both the parties the following issue no.1 was framed on 27.8.2024:—

1(A) Whether the inquiry has been conducted against the petitioner by the respondent was legal, justified and in accordance with the principle of natural justice? . . . *OPR.*

2. Relief.

7. Petitioner in order to prove his case has examined three witnesses including himself. PW1 Sanjeev Kumar is the brother of one Ganesh who has expired while returning from his duty in the factory. He has provided death certificate of his brother Ext.PW1/D and stated that he (deceased Ganesh) had worked in Coslight Dhamandri and he died on 19th August, 2017. His brother used to go factory everyday there was a Nala on the way. Earlier his duty time was 9 AM to 5:30 PM. However his duty was fixed from 10 in the evening to 6 in the morning and while returning from his duty he had died while crossing the Nala. The death of his brother according to him was due to the negligence of company who had failed to provide conveyance. PW2 is Sanjeev Kumar. He has stated that the petitioner is his nephew. Sushil Kumar is his real brother and he had died on 22.1.2018. He produced his death certificate Ext. PW2/A. The petitioner was at home on that day and was taking part in the cremation. PW3 is Mohmad Aslam Khan Rathor. He has stated that he was posted as security officer of respondent establishment since March, 2016 till December, 2018. He has also stated regarding death of one Ganesh who was travelling on motorcycle after his duties when he was washed away in Swan River due to flood all of sudden. He has further stated that deceased could have been saved had his shift being changed from night to day. The company according to him did not give any financial benefits to the family of deceased. He also alleged that petitioner and others had never misbehaved with the establishment nor hurled any abuses. Petitioner and other were pressing their demands in a peaceful manner. Inquiry Officer in the case of the petitioner and others was that Navin Thakur who was an advocate of the company. The petitioner has produced his affidavit Ext. PW4-A wherein he has reiterated the facts stated in the petition and also produced on record performance letter Ext. PW4/B, another performance letter Ext. PW4/C, copy of letter Mark-A, copy of compromise Mark-B, copy of letter dated 16.7.2018 Mark-C, copy of letter dated 4.10.2018 Mark-D.

8. Respondent in order to prove their case had examined Shri Navin Thakur as RW1. He has produced on record his affidavit Ext. RW1/A as well as inquiry report Ext. RW1/B and statements of as many as four witnesses Exts. RW1C1 to C4 and proceedings Ext.RW1/C5 to C11, letter Ext. RW1/C12 and charge-sheet Ext. RW1/C13. RW2 Shri Sachin Thakur is the HR Manager of the respondent company has produced his affidavit Ext. RW2/A. He has reiterated the facts stated in the reply. He also produced on record letters received from security officer Ext. RW2/B to Ext. RW2/M and appointment letter Ext. RW2/O. RW3 Shri Rarvinder Singh, Security Officer, M/s Coslight India Telecom Pvt. Ltd. has stated on oath that the petitioner along-with other persons mentioned in the affidavit that petitioner along with other persons raised derogatory slogans against the respondent regarding which he wrote several letters to the management of M/s Coslight India Telecom Pvt. Ltd. RW4 Shri Latif Khan as another employee of the company who has stated on oath that he was provoked by the petitioner and other employees to go for strike with them. However since he found that there was no issue of the death of Ganesh in the strike and factory management was ready to compensate to the family member of deceased Ganesh, he did not support the illegal activities using filthy slogans against the management. RW5 Shri Manveer Singh presently working as HR Assistant Manager in Coslight India Telecom Pvt. Ltd. has also stated the facts mentioned in the reply. He produced his affidavit Ext. RW5/A. He also produced on record MOU Ext. RW5/B, charge-sheet Ext. RW5/C, copy of terms and conditions Ext. RW5/D,

domestic inquiry Ext. RW5/E, show cause notice dated 30.8.2018 Ext. RW5/F, letter dated 27.2.2018 to Inquiry Officer Ext. RW5/G, termination letter Ext. RW5/H, full and final settlement sheet Ext. RW5/J, postal receipt Ext. RW5/K, letter to petitioner Ext. RW5/L, authority letter Ext. RW5/M and letter written to deceased Ganesh Kumar Ext. RW5/N and letter dated 29.5.2017 Mark-A.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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

Issue No.1 : No

Issue No.1(A) : Yes

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Relief : The reference is decided Accordingly

### REASONS FOR FINDINGS

#### *Issue No.1(A)*

11. Learned counsel for the petitioner has argued that the termination of the services of the petitioner were illegal and unjustified. False allegations were made against the petitioner and false charge-sheet on wrong facts was also prepared. The Inquiry Officer Naveen Thakur was under the influence of the company. Enquiry report was prepared in favour of the factory management without appreciating statement of petitioner. The services of petitioner were terminated subsequently without any cause and without complying with the essential provisions of law. It is alleged that on 22.1.2018 the petitioner was not even present in the inquiry as his parental uncle had expired and petitioner was busy performing his last right. On 24.1.2018 the petitioner had shown his willingness to join the company but he was not allowed to do so despite repeated request.

12. Learned Counsel for the respondent has submitted that the services of the petitioner were dispensed after conducting a just inquiry on the charges of gross misconduct. The petitioner had joined the inquiry proceedings. He cross-examined complainant witness and also examined himself in his defence. The termination of petitioner was consequent to the inquiry report which was based on statement of witnesses. The procedure as per law was followed by the Inquiry Officer and there is no circumstances pointed in the inquiry proceedings which would indicate or imply that the principle of natural justice were not complied with. Learned counsel for the respondent had further argued that inquiry proceedings being just and proper the termination of the petitioner was legal and justified.

13. The onus of proving the issue1(A) was on the respondent who examined RW1 Shri Naveen Thakur, Inquiry Officer. The report Ext. RW1/B has been produced on record. The mere allegations against the Inquiry Officer are that the Inquiry Officer did not obtain consent of petitioner to accept him as Inquiry Officer, that he had not given written notice to the petitioner regarding the fact that they could engage counsel of their choice during inquiry proceedings and that he was also representing the company in other cases. The record of inquiry proceedings reveals that before cross-examining the complainant witness no objections seems to have been raised on behalf of petitioner that he was denied any representative of his choice for the said purpose. Witnesses of complainant was examined and then cross-examined by petitioner himself who appears as witness in his defence. Though no notice in writing was actually given to the petitioner qua his right to engage his counsel, Inquiry Officer mentions in zimini orders and report that he orally told the petitioner qua his right of engaging a representative and no suggestion is made to RW1 Shri Naveen Thakur that he had not informed the petitioner of his right to engage his counsel orally also. The Inquiry Officer was appointed by the Vice President of company vide Ext. RW5/G who is also a disciplinary authority. RW1 Shri Naveen Thakur has denied that he looks after the other matters of the company and there is no evidence to prove these allegations. Inquiry Officer has denied that he continued inquiry in a manner suitable for the company. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in 2020 LLR 847 has held in para nos. 11 and 12 as follows:—

“11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :

“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following



terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin*). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (*Calvin v. Carr*). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B. Karunakar*) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi*) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in *B. Karunakar* should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

\* \* \* \*

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
  - (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, *viz.*, whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted

therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

- (4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
- (b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*. The ultimate test is always the same, *viz.*, test of prejudice or the test of fair hearing, as it may be called.
- (5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, *i.e.*, between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, *i.e.*, in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined

from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision”.

“12. The Supreme Court in the case of State Vs. N.S. Ganeswaran reported in (2013) 3 SCC 594 has held as under :

“12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (*Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v. Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.*)”

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards”.

14. The petitioner in the present case has failed to establish that he was condemned unheard. The management has produced on record all the inquiry proceedings duly participated by the petitioner in order to show that petitioner had faced the just fair inquiry. There are no other specific allegations regarding the violation of principle of natural justice. The facts constituting the inquiry not being in conformity with Model Standing Orders could be raised either in the pleading or evidence produced on behalf of petitioner. The prejudice if any caused to the petitioner with respect to procedure adopted by Inquiry Officer is not clearly proved on record. It cannot be held that inquiry faced by the petitioner is not conducted in just and fair manner. Accordingly issue No.1 (A) is decided in the favour of respondent.

#### *Issues No.1 and 2*

15. A specific reference has been issued to this court to determine whether the termination of services of the petitioner Manjeet Singh (after conduct of domestic inquiry) without compliance of the provisions of the Industrial Disputes Act, 1947 is legal and justified. As sequel to the findings on issue No.1(A) above now established that the services of the petitioner were terminated on account of proved misconduct in a domestic inquiry.

16. Learned Counsel for the petitioner has vehemently argued that company management had acted vindictively as services of petitioner along-with five other persons were terminated on

various allegations and biased inquiry proceedings. The reason for the ill-will was protest made by the petitioner and other worker regarding the non grant of service benefits to the family of deceased worker Ganesh who expired in accident while returning from the company and the demand of workers to make available mode of conveyance/buses so that they can safely return to their home after work.

17. PW2 Shri Sanjeev Kumar has alleged that when the petitioner and other worker had demanded bus service and compensation the management had thrown them out. In cross-examination he has feigned ignorance that petitioner and other workers has shouted in the company closed the main gate of factory and went on illegal strike. PW2 Shri Sanjeev Kumar has alleged that on 22.1.2018 petitioner was at home to perform last rites on account of death of one Shushil who is his real brother. In cross-examination he has however merely shown ignorance to the fact that petitioner and other persons had raised slogans since the month of June and July every day. He also feigned ignorance to the suggestion that on the said date the petitioner and other persons had shouted slogans till 11 AM thereafter they left. PW3 Mohmad Aslam Khan Rathor has stated on oath that the petitioner and other had not misbehaved with the respondent establishment nor hurled any abuses. Though it has been alleged that the Inquiry Officer Shri Naveen Thakur was also doing that work of the company however there is no documentary evidence produced by the respondent in this regard. He admits that complainant/report Ext. PA was actually written by him and contrary to his assertion that he was acting under pressure, he has admitted that till date he has not made any complaint regarding pressure on him. He also signed documents containing contents of complaint Ext. PA during inquiry proceedings and did not mention about undue pressure on him. In fact this witness admits that he had dispute with company thus his statement is to be taken with a pinch of salt.

18. The petitioner has denied the allegations of misconduct and that on account his misconduct his services were terminated. Strangely he has denied that he does not remember on 22.1.2018 he along with other employees namely Manjit Singh, Amit Kumar Bali, Khursheed Mohd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar, Gaurav Kishore started stopped the employees of the factory forcibly on the main gate of the factory and also forced other employees to sit there. According to him he had not come to factory on 22.1.2018. He denied that above mentioned persons started unparliamentarily slogans against the management and instigated other employees for strike. With regard to the allegations of abuses and slogans against the management he denied the allegations. He also denied that on 10.6.2017 he had admitted his guilt. Though he admitted that inquiry was conducted. He however did not remember that letters were issued by the complainant. Though he alleges that on 22.1.2018 he was busy performing his last rites of his uncle. He failed to state the distance of the house from the factory. The evidence of both the parties reveals that the allegations of misconduct were proved in the enquiry proceedings on the basis of statement of the witnesses. The allegations made in the charge-sheet were defended by the petitioner and he cross-examined the complainant witnesses and also examined himself in defence. Legality of strike is also under the doubt as the witness RW3 Ravinder Singh and RW4 Latif Khan stated that company has taken steps to ensure benefits to the survivor of deceased Ganesh and while the services of the petitioner were terminated on account of proved misconduct in domestic inquiry. Since termination of the petitioner consequent to the inquiry proceedings and charges of misconduct the same cannot be held to be violative of the provisions of the Industrial Disputes Act by the respondent company. Issues no.1 and 2 are decided accordingly in the favour of respondent.

### *Issue No.3*

19. The petitioner has suppressed that he took part in inquiry proceedings without any objection. It has been discussed while deciding issues no. 1 and 2 above that the termination of the

services of the petitioner was on the conclusion of an inquiry proceedings where the charges of misconduct stood proved against the petitioner. Consequently, the petitioner is not entitled for any benefits in the present case.

#### *Issue No. 4*

20. The maintainability of the claim petition was challenged on the ground that petitioner had suppressed the actual material facts from this court while presenting the petition. The evidence revealed that just and fair inquiry was carried out by the company on the charges of misconduct against the petitioner. Since the termination of the services of the petitioner was consequent to the proved charges of misconduct the present claim petition is not maintainable.

#### *Issues No. 5 and 6*

21. The onus of proving these issues was on the respondent. No specific evidence has been led to show that the adjudication of the claim was beyond the jurisdiction of this Tribunal nor the claim petition appears to be barred by limitation hence both issues shall remain unpressed.

#### *Relief*

22. As a sequel to the above discussion on preliminary issue no.1(A) and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

23. The Hon'ble Supreme Court in Uttar Pradesh State Road Transport Corporation versus GajadharNath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021) has held in para no.5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 1947 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.<sup>5</sup> held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

“32. From those decisions, the following principles broadly emerge :-

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the

decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
- (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
- (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.
- (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal.”

24. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

**“[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour

Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

25. Going by the procedure as directed by the Hon’ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

26. Now come up for hearing of both the parties.

Be called after respite.

16.9.2024 Present : Sh. Vinesh Dhiman, Ld. Counsel for the petitioner

: Sh. Neeraj Bhatnagar, Ld. Counsel for respondent

27. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.

28. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon’ble Supreme Court in case **U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

29. It is a settled law that the punishment for misconduct must be proportionally and reasonably construed vis-a-vis the nature of misconduct proved or established. In petitioner’s case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on

workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation to the petitioner within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 16th day of September, 2024.

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

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

Reference No. : 107/2019

Date of Institution : 19.10.2019

Date of Decision : 16.9.2024

Shri Chetan Kumar s/o Shri Narender Kumar, r/o V.P.O. Dhamandri, Tehsil and District Una, H.P. . . *Petitioner.*

*Versus*

The Factory Manager/Employer, M/s Coslight India Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Vinesh Dhiman, Ld. Adv.

For Respondent : Sh. Neeraj Bhatnagar, Ld. Adv.

**AWARD**

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

“Whether termination of services of Shri Chetan Kumar s/o Shri Narender Kumar, r/o V.P.O. Dhamandri, Tehsil & District Una, H.P. *w.e.f.* 15-09-2018 by the Factory Manager/Employer, M/s Coslight India Telecom Private Limited, V.P.O. Dhamandri,



Tehsil & District Una, H.P. (after conducting domestic enquiry) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that petitioner/claimant was appointed as Office Boy in HR and Admin department of respondent company on 28.5.2015 *vide* employee code CL-1103 which has been confirmed on 28.11.2015. It is asserted that petitioner has done his duty regularly, sincerely, honestly and with the dedication in the factory of the respondent company. On 19.8.2017 a worker of respondent company named as Ganesh expired after completing his night duty during the rainy season. Earlier the petitioner and other workers have requested the management by way of letter for providing bus service to the worker during rainy days as many workers comes from remote area where they did not have proper roads and they had to cross the rainy Nalas. It is alleged Ganesh had lost his life due to the fact that there was negligence on the part of the company and the company was escaping from his liability even towards the family of deceased Ganesh. Petitioner and other workers had served notice to respondent company to provide benefits to the family of the deceased Ganesh. On 22.1.2018 the workers of the factory peacefully requested the management of the respondent company regarding the claim and benefits to the family of deceased Ganesh but the management refused to do so and the behaviour of the management was adamant and threatening towards the workers. The management was alleged to be in a mood of revenge and made the false allegations against the petitioner and other workers and thereafter setup biased internal inquiry. On 24.1.2018 Vice President of Factory with Labour Inspector had compromised the matter and the petitioner had shown his willingness to join the job. Despite this the management did not allow the petitioner to join factory again and on 5.2.2018 the services of the petitioner were suspended and false inquiry was initiated against him. It is further alleged that on the basis of false allegations show cause notices and charge sheet along-with suspension letters were sent to the claimant which were duly replied by him. On 26.2.2018 factory management without the consent of the petitioner appointed Mr. Naveen Thakur an Inquiry Officer who has acting under the influenced of factory management and made a report in favour of the factory management without providing an opportunity to the petitioner and without appreciation of statement of the petitioner *vide* which ultimately on 15.9.2018 services of the petitioner were terminated. On 30.8.2018 factory management had again issued another show cause notice on the report of Inquiry Officer and ultimately on 15.9.2018 factory management illegally terminated the claimant/petitioner from his services without any sufficient reason. On 4.10.2018 claimant/petitioner again wrote a letter to the factory management to rejoin his services but in vain. It is alleged that the services of the petitioner were terminated on the basis of frivolous allegations but the management had continued the services of other employees after taking statements from them. It is alleged that the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act. The petitioner has prayed that the termination of his services may be declared as null and void and he may be granted all consequential benefits and other allowances, back wages, seniority, past service benefits and compensation.

3. In reply on behalf of the management company it is asserted that the petitioner has not narrated the true and original facts. It is further mentioned that petitioner had tried to manipulate the facts by raising false and frivolous allegations in the petition. In-fact there did not exist any cause of action in favour of the petitioner. Petitioner joined the answering respondent factory on 28.5.2015 as a office boy-HR and Admin on the gross salary of Rs.5600/- as per appointment letter on 28.5.2015. Due to continuous misbehaviour on his part with senior officers of the management factory had taken the decision to discontinue and terminate the services of the petitioner on the ground of misconduct and misbehaviour. On 22.1.2018 the petitioner had attended his work and made his attendance in the main gate of the factory and when entered into the main gate of the

factory and thereafter the petitioner and other employees namely Manjeet Singh, Amit Kumar, Bali, Khurshet Mohdd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar and Gaurav Kishore had started stopping the other employees of the factory and forcibly on the main gate of the factory forced other employees to sit there and started unparliamentarily slogans against the management as well as instigated other employees for illegal strike. The petitioner in his speech expressed the words that on 23.1.2018 there was visit of an important customer in the factory and in order to create pressure on the management of the factory thereafter the petitioner and other employees sat on illegal strike which was continued till 3.2.2018. Thereafter the petitioner along with 5-6 employees of the factory started slogans against the factory HR management Nakk Babu, Sachin Thakur and Mukesh Jain by uttered slogans Murdabad as well as Coslight Management Murdabad. Sachin Gunda Murdabad, Sachin ki gunda gardi nahi chalegi with other slogans as mentioned in the complaint. *Vide* letter dated 10.6.2017 the petitioner admitted his guilt of raising slogans and also his mistake. It is alleged that petitioner had stopped the employees of the factory from entry of main gate and thereafter adverse slogans against the factory officials including Sachin Thakur who was abused by shouting the words No Number Juti da Sachin Thakur Kutti Da. It is alleged that the petitioner along-with other employees had used unparliamentarily language against the senior officers of the factory. The management thereafter issued additional charge-sheet and process was fixed and Manveer Singh put his presence being a representative of the factory and put forwarded his reply. Domestic inquiry was duly conducted by the answering respondent by appointing Shri Naveen Thakur, Inquiry Officer. The report of the domestic enquiry was submitted by Inquiry Officer and petitioner was duly informed by the respondent company. Before taking action against the petitioner various notices were sent to him by registered post however he did not made reply and he was found liable for misconduct. In the light of these averments it is submitted that the petition is abused process of the court and the petitioner having suppressed the material facts is estopped from filing the petition. On merits the other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether termination of services of the petitioner *w.e.f.*15.9.2018 by the respondent is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the respondent/management? . . . *OPP.*
3. Whether the petitioner has not approached this Tribunal with clean hands and suppressed material facts, as alleged. If so, its effects? . . . *OPR.*
4. Whether the claim petition is not maintainable? . . . *OPR.*
5. Whether this Tribunal has no jurisdiction to entertain and decide the claim petition? . . . *OPR.*
6. Whether the claim petition is barred by limitation and laches? . . . *OPR.*

Relief.

6. During the course of arguments it appears that essential issue between the parties regarding legality of the enquiry had not been framed. With the consent of both the parties and vide separate statements of learned counsel for both the parties the following issue no.1 was framed on 27.8.2024:—

1(A). Whether the inquiry has been conducted against the petitioner by the respondent was legal, justified and in accordance with the principle of natural justice? . . . *OPR.*

2. Relief

7. Petitioner in order to prove his case has examined three witnesses including himself. PW1 Sanjeev Kumar is the brother of one Ganesh who has expired while returning from his duty in the factory. He has provided death certificate of his brother Ext.PW1/D and he (deceased Ganesh) had worked in Coslight Dhamandri and he died on 19th August, 2017. His brother used to go factory everyday there was a Nala. Earlier his duty time was 9 AM to 5:30 PM. Even however his duty was fixed 10 in the evening to 6 in the morning and while returning from his duty he had died while crossing the Nala. The death of his brother according to him was due to the negligence of company which had failed to provide conveyance. PW2 is Sanjeev Kumar. He has stated that the petitioner was his nephew. Sushil Kumar is his real brother and he was died on 22.1.2018. He produced his death certificate Ext. PW2/A. The petitioner was at home on that day and was taking part in the cremation. PW3 is Mohmad Aslam Khan Rathor. He has stated that he was posted as security officer of respondent establishment since March, 2016 till December, 2018. He has also stated regarding death of one Ganesh who was travelling on motorcycle and after his duties where had was washed away in Swan River due to flood all of sudden. He has further stated that deceased could have been saved had his shift being changed from night to day. The company according to him did not give any financial benefits to the family of deceased. He also alleged that petitioner and others had never misbehaved with the establishment nor hurled any abuses. Petitioner and other were pressing their demands in a peaceful manner. Inquiry Officer in the case of the petitioner and others was Navin Thakur who was an advocate of the company. The petitioner has produced his affidavit Ext. PW4/A wherein he has reiterated the facts stated in the petition and also produced on record appointment letter Ext. PW4/B, increment letter Ext. PW4/C, another letter Ext. PW4/D, letter dated 24.1.2018 Ext. PW4/E.

8. Respondent in order to prove their case had examined Shri Navin Thakur as RW1. He has produced on record his affidavit Ext. RW1/A as well as inquiry report Ext. RW1/B and statements of as many as four witnesses Exts. RW1C1 to C4 and proceedings Ext.RW1/D. RW2 Shri Sachin Thakur is the HR Manager of the respondent company has produced his affidavit Ext. RW2/A. He has reiterated the facts stated in the reply. He also produced on record letters received from security officer Ext. RW2/B to Ext. RW2/O and appointment letter Ext. RW2/O. RW3 Shri Ravinder Singh, Security Officer, M/s Coslight India Telecom Pvt. Ltd. has stated on oath that the petitioner along-with other persons mentioned in the affidavit derogatory slogans against the respondent regarding which he wrote several letters to the management of M/s Coslight India Telecom Pvt. Ltd. has produced his lengthy evidence. RW4 Shri Latif Khan is another employee of the company who has stated on oath that he was provoked by the petitioner and other employees to go for strike with them. However since he found that there was no issue of the death of Ganesh in the strike and factory management was ready to compensate to the family member of deceased Ganesh, he did not support the illegal activities using filthy slogans against the management. RW5 Shri Manveer Singh presently working as HR Assistant Manager in Coslight India Telecom Pvt. Ltd. has also stated the facts mentioned in the reply. He produced his affidavit Ext. RW5/A. He also produced on record MOU Ext. RW5/B, domestic inquiry report dated 26.2.2018 Ext. RW5/C, appointment of Inquiry Officer Ext. RW5/D, charge sheet dated 5.2.2018 Ext. RW5/F, show cause notice dated 28.8.2018 Ext. RW5/G, appointment of management representative Ext. RW5/H,

charge Ext. RW5/J, terms and conditions of employment Ext. RW5/J, termination letter dated 15.9.2018 Ext. RW5/L, letter dated 15.5.2018 Ext. RW5/M, authority letter Ext. RW5/N and letter dated 29.5.2017 Mark-A.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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

Issue No.1 : No

Issue No.1(A) : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : The reference is decided Accordingly

### REASONS FOR FINDINGS

#### *Issue No.1(A)*

11. Learned counsel for the petitioner has argued that the termination of the services of the petitioner were illegal and unjustified. False allegations were made against the petitioner and false charge-sheet on wrong facts was also prepared. The Inquiry Officer Naveen Thakur was under the influence of the company. Enquiry report was prepared in favour of the factory management without appreciating statement of petitioner. The services of petitioner were terminated subsequently without any cause and without complying with the essential provisions of law. It is alleged that on 22.1.2018 the petitioner was not even present in the inquiry as his parental uncle had expired and petitioner was busy performing his last right. On 24.1.2018 the petitioner had shown his willingness to join the company but he was not allowed to do so despite repeated request.

12. Learned Counsel for the respondent has submitted that the services of the petitioner were dispensed after conducting a just inquiry on the charges of gross misconduct. The petitioner had joined the inquiry proceedings. He cross-examined complainant witness and also examined himself in his defence. The termination of petitioner was consequent to the inquiry report which was based on statement of witnesses. The procedure as per law was followed by the Inquiry Officer and there is no circumstances pointed in the inquiry proceedings which would indicate or imply violation of the principle of natural justice. Learned counsel for the respondent had further argued that inquiry proceedings being just and proper the termination of the petitioner was legal and justified.

13. The onus of proving the issue No.1(A) was on the respondent who examined RW1 Shri Naveen Thakur, Inquiry Officer. The report Ext. RW1/B has been produced on record. The

mere allegations against the Inquiry Officer are that the Inquiry Officer did not obtain consent of petitioner to accept him as Inquiry Officer, that he had not given written notice to the petitioner regarding the fact that they could engage counsel of their choice. Inquiry Officer had mentioned in report as well as zimni order that he apprised the parties qua their right of engaging a representative before cross-examining the complainant witness no objections seems to have been raised on behalf of petitioner that he was denied any representative of his choice for the said purpose. Witnesses of complainant was examined and then cross-examined, petitioner himself appeared as witness in his defence. Though no notice in writing was actually given to the petitioner qua engage his counsel. Inquiry Officer orally told the petitioner qua his right and no suggestion is made to RW1 Shri Naveen Thakur that he had not informed the petitioner of his right to engage his counsel orally also. No doubt the Inquiry Officer was appointed by the complainant management it is clear from Ext. RW5/D that Vice President had appointed the inquiry officer. RW1 Shri Naveen Thakur has denied that he looks after the other matters of the company and there is no evidence to prove these allegations. Inquiry Officer has denied that he continued inquiry in a manner suitable for the company. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in 2020 LLR 847 has held in para nos. 11 and 12 as follows:—

“11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :

“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable—a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called—that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding—which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is

between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin*). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (*Calvin v. Carr*). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B. Karunakar*) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi*) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, *i.e.*, whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in *B. Karunakar* should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (*i.e.*, adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

\* \* \* \*

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
  - (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, *viz.*, whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of

prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, *i.e.*, whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

- (4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
- (b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*. The ultimate test is always the same, *viz.*, test of prejudice or the test of fair hearing, as it may be called.
- (5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, *i.e.*, between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, *i.e.*, in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made

shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision”.

“12. The Supreme Court in the case of State Vs. N.S. Ganeswaran reported in (2013) 3 SCC 594 has held as under :

“12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (*Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v. Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.*)”

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards”.

14. The petitioner in the present case has failed to establish that he was condemned unheard. The management has produced on record all the inquiry proceedings duly participated by the petitioner in order to show that petitioner had faced the just fair inquiry. No other specific allegations regarding the violation of principle of natural justice, the inquiry not being in confirmative with Model Standing Orders could be raised either in the pleading or evidence produced on behalf of petitioner. The prejudice if any caused to the petitioner with respect to procedure adopted by Inquiry Officer is not clearly proved on record. It cannot be held that inquiry faced by the petitioner is not just and fair manner. Accordingly issue No.1(A) is decided in the favour of respondent.

#### *Issues No.1 and 2*

15. A specific reference has been issued to this court to determine whether the termination of services of the petitioner Chetan Kumar (after conduct of domestic inquiry) without compliance of the provisions of the Industrial Disputes Act, 1947 is legal and justified. As sequel to the findings on issue No.1(A) above now established that the services of the petitioner were terminated on account of proved misconduct in a domestic inquiry.

16. Learned Counsel for the petitioner has vehemently argued that company management had acted vindictively as services of petitioner along-with five other persons were terminated on



various allegations and biased inquiry proceedings. The reason for the ill-will was protest made by the petitioner and other worker regarding the non grant of service benefits to the family of deceased worker Ganesh who expired in accident while returning from the company and the demand of workers to make available mode of conveyance/buses so that they can safely return to their home after works.

17. PW2 Shri Sanjeev Kumar has alleged that when the petitioner and other worker had demanded bus service and compensation the management had thrown them out. In cross-examination he has feigned ignorance that petitioner and other workers has shouted in the company closed the main gate of factory and went on illegal strike. PW2 Shri Sanjeev Kumar has alleged that on 22.1.2018 petitioner was at home to perform last rites of his uncle Sushil. In cross-examination however he merely shown ignorance to the fact that petitioner and other persons had raised slogans since the month of June and July everyday. He also feigned ignorance to the suggestion that on the said date the petitioner and other persons had shouted slogans till 11 A.M. thereafter they left. PW3 Mohmad Aslam Khan Rathor has stated on oath that the petitioner and other had not misbehaved with the respondent establishment nor hurled any abuses. Though it has been alleged that the Inquiry Officer Shri Naveen Thakur was also doing that work of the company however there is no documentary evidence produced by the respondent in this regard. He admits that complaint/report Ext. PA was actually written by him and contrary to his assertion he was acting under pressure, he has admitted that till date he has not made any complaint regarding pressure on him. He also signed documents containing contents of complaint Ext. PA during inquiry proceedings and did not mention undue pressure on him. In fact this witness admits that he had dispute with company thus his statement to be taken with a pinch of salt.

18. The petitioner has denied that he used to misconduct and on account his misconduct his services were terminated. Strangely he has stated that he does not remember on 22.1.2018 he along with other employees namely Manjit Singh, Amit Kumar Bali, Khursheed sMohd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar, Gaurav Kishore started stopped the employees of the factory forcibly on the main gate of the factory and also forced other employees to sit there. In spite of denial he states that he does not remember that above mentioned persons started unparliamentarily slogans against the management and instigated other employees for strike. With regard to the allegations of abuses and slogans against the management he fails to remember the same. He also feigned ignorance that on 10.6.2017 he had admitted his guilt. Though he took part in the inquiry. He however admitted that letters were issued by the complainant. Though he alleges that on 22.1.2018 he was busy performing his last rites of his uncle. He failed to know the distance of the house from the factory. The evidence of both parties reveals that the allegations of misconduct were proved in the enquiry proceedings on the basis of statement of the witnesses. The allegations made in the charge-sheet were defended by the petitioner and cross-examined the complainant witnesses and also examined himself in defence. Legality of strike is also under the doubt as the witnesses RW3 Ravinder Singh and RW4 Latif Khan stated that company has taken steps to ensure that the benefits to survivor of deceased Ganesh and the services of the petitioner were terminated on account of proved misconduct in domestic inquiry. Since termination of the petitioner was consequent to the inquiry proceedings and charges of misconduct the same cannot be violative of the provisions of the Industrial Disputes Act by the respondent company. Issues no.1 and 2 are decided accordingly in the favour of respondent.

### *Issue No. 3*

19. The petitioner has suppressed that he had taken part in inquiry proceedings with due opportunity. It has been discussed while deciding issues no. 1 and 2 above that the termination of the services of the petitioner was on the conclusion of an inquiry proceedings where the charges of misconduct stood proved against the petitioner. Consequently, the petitioner is not entitled for benefits as prayed.

*Issue No.4*

20. The maintainability of the claim petition was challenged on the ground that petitioner had suppressed the actual material facts from this court while presenting the petition. The evidence revealed that just and fair inquiry was carried out by the company on the charges of misconduct against the petitioner. Since the termination of the services of the petitioner was in consequence to the proved charges of misconduct the present claim petition is not maintainable.

*Issues No. 5 and 6*

21. The onus of proving these issues on the respondent. No specific evidence has been led to show that the adjudication of the claim was beyond the jurisdiction of this Tribunal nor the claim petition appears to be barred by limitation hence both issues shall be unpressed.

*Relief*

22. As a sequel to the above discussion on preliminary issue no.1(A) and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

23. The Hon'ble Supreme Court in **Uttar Pradesh State Road Transport Corporation versus GajadharNath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021)** has held in para no.5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 1947 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as *Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors. 5* held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

“32. From those decisions, the following principles broadly emerge :—

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
- (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
- (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.
- (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal.”

24. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

“[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement

of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

25. Going by the procedure as directed by the Hon’ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

26. Now come up for hearing of both the parties.

Be called after respite.

16.9.2024 Present : Sh. Vinesh Dhiman, Ld. Counsel for the petitioner

: Sh. Neeraj Bhatnagar, Ld. Counsel for respondent

27. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.

28. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon’ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

29. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed vis-a-vis the nature of misconduct proved or established. In petitioner’s case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation within 2 months of this order failing which the

amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 16th day of September, 2024.

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

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

Reference No. : 108/2019

Date of Institution : 19.10.2019

Date of Decision : 16.9.2024

Shri Anil Kumar s/o Shri Maghni Ram, r/o Village Boul, P.O. Khurwain, Tehsil Bangana, District Una, H.P. . . *Petitioner.*

*Versus*

The Factory Manager/Employer, M/s Coslight India Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Vinesh Dhiman, Ld. Adv.

For Respondent : Sh. Neeraj Bhatnagar, Ld. Adv.

**AWARD**

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

“Whether termination of services of Shri Anil Kumar s/o Shri Maghni Ram, r/o Village Boul, P.O. Khurwain, Tehsil Bangana, District Una, H.P. *w.e.f.* 15-09-2018 by the Factory Manager/Employer, M/s Coslight India Telecom Private Limited, V.P.O. Dhamandri, Tehsil & District Una, H.P. (after conducting domestic enquiry) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that petitioner/claimant was appointed as Helper in production department of respondent company on 15.6.2015 vide employee code CL-1150 and he worked continuously upto 15.9.2018. On 22.1.2018 the factory management had made false allegations on the claimant/petitioner along with some other employees/workers and started enquiry on these persons for their retrenchment. On 19.8.2017 a worker of respondent company named as Ganesh expired after completing his night duty during the rainy season. Earlier the petitioner and other workers have requested the management by way of letter for providing bus service to the worker during rainy days as many workers came from remote area where they did not have proper roads and they had to cross the rainy Nalas. It is alleged Ganesh had lost his life due to the fact that there was negligence on the part of the company and the company was escaping from his liability even towards the family of deceased Ganesh. Petitioner and other workers had served notice to respondent company to provide benefits to the family of the deceased Ganesh. On 22.1.2018 the workers of the factory peacefully requested the management of the respondent company regarding the claim and benefits to the family of deceased Ganesh but the management refused to do so and the behaviour of the management was adamant and threatening towards the workers. The management was alleged to be in a mood of revenge and made the false allegations against the petitioner and other workers and thereafter setup biased internal inquiry. On 24.1.2018 Vice President of Factory with Labour Inspector had compromised the matter and the petitioner had shown his willingness to join the job. Despite this the management did not allow the petitioner to join factory again and on 5.2.2018 the services of the petitioner were suspended and false inquiry was initiated against him. It is further alleged that on the basis of false allegations show cause notices and charge sheet along-with suspension letters were sent to the claimant which were duly replied by him. On 26.2.2018 factory management without the consent of the petitioner appointed Mr. Naveen Thakur an Inquiry Officer who has acting under the influenced of factory management and made a report in favour of the factory management without providing an opportunity to the petitioner and without appreciation of statement of the petitioner vide which ultimately on 15.9.2018 services of the petitioner were terminated. On 30.8.2018 factory management had again issued another show cause notice on the report of Inquiry Officer and ultimately on 20.9.2018 factory management illegally terminated the claimant/petitioner from his services without any sufficient reason. On 4.10.2018 claimant/petitioner again wrote a letter to the factory management to rejoin his services but in vain. It is alleged that the services of the petitioner were terminated on the basis of frivolous allegations but the management had continued the services of other employees after taking statements from them. It is alleged that the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act. The petitioner has prayed that the termination of his services may be declared as null and void and he may be granted all consequential benefits and other allowances, back wages, seniority, past service benefits and compensation.

3. In reply on behalf of the management company it is asserted that the petitioner has not narrated the true and original facts. It is further mentioned that petitioner had tried to manipulate the facts by raising false and frivolous allegations in the petition. In-fact there did not exist any cause of action in favour of the petitioner. Petitioner joined the answering respondent factory on 15.6.2015 as Helper on the gross salary of Rs.5100/- as per appointment letter on 15.6.2015. Due to continuous misbehaviour on his part with senior officers of the management factory had taken the decision to discontinue and terminate the services of the petitioner on the ground of misconduct and misbehaviour. On 22.1.2018 the petitioner had attended his work and made his attendance in the main gate of the factory and then entered into the main complex of the factory and thereafter the petitioner and other employees namely Manjeet Singh, Amit Kumar, Bali, Khurshet Mohdd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar and Gaurav Kishore had started stopping the other employees of the factory and forcibly on the main gate of the factory forced other employees to sit there and started unparliamentarily slogans against the management as well as instigated other employees for illegal strike. The petitioner in his speech expressed the words

that on 23.1.2018 there was visit of an important customer in the factory and in order to create pressure on the management of the factory thereafter the petitioner and other employees sat on illegal strike which was continued till 3.2.2018. Thereafter the petitioner along with 5-6 employees of the factory started slogans against the factory HR management Nakk Babu, Sachin Thakur and Mukesh Jain by uttered slogans Murdabad as well as Coslight Management Murdabad. Sachin Gunda Murdabad, Sachin ki gundagardi nahi chalegi with other slogans as mentioned in the complaint. It is alleged that petitioner had stopped the employees of the factory from entry of main gate and thereafter adverse slogans against the factory officials including Sachin Thakur who was abused by shouting the words No Number Juti da Sachin Thakur Kutti Da. It is alleged that the petitioner along-with other employees had used unparliamentarily language against the senior officers of the factory and provoked the employees to go on illegal strike which is violation of Industrial Employment Standing Orders and amount to misconduct. In this respect domestic inquiry was initiated. The management thereafter issued charge-sheet and process was fixed and Manveer Singh put his presence being a representative of the factory and petitioner put forwarded his reply. Domestic inquiry was duly conducted by the answering respondent by appointing Shri Naveen Thakur, Inquiry Officer. The report of the domestic enquiry was submitted by Inquiry Officer and petitioner was duly informed by the respondent company. Before taking action against the petitioner various notices were sent to him by registered post and he was found liable for misconduct. In the light of these averments it is submitted that the petition is abused process of the court and the petitioner having suppressed the material facts is estopped from filing the petition. On merits the other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether termination of services of the petitioner *w.e.f.* 15.9.2018 by the respondent is/was illegal and unjustified, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the respondent/management? .. *OPP.*
3. Whether the petitioner has not approached this Tribunal with clean hands and suppressed material facts, as alleged. If so, its effects? .. *OPR.*
4. Whether the claim petition is not maintainable? .. *OPR.*
5. Whether this Tribunal has no jurisdiction to entertain and decide the claim petition? .. *OPR.*
6. Whether the claim petition is barred by limitation and latches? .. *OPR.*

Relief.

6. During the course of arguments it appears that essential issue between the parties regarding legality of the enquiry had not been framed. With the consent of both the parties and vide separate statements of learned counsel for both the parties the following issue no.1 was framed on 27.8.2024:—

1(A) Whether the inquiry has been conducted against the petitioner by the respondent was legal, justified and in accordance with the principle of natural justice? . . . OPR.

2. Relief.

7. Petitioner in order to prove his case has examined three witnesses including himself. PW1 Sanjeev Kumar is the brother of one Ganesh who has expired while returning from his duty in the factory. He has provided death certificate of his brother Ext.PW1/D and stated that he (deceased Ganesh) had worked in Coslight Dhamandri and he died on 19th August, 2017. His brother used to go to factory everyday and there was a Nala on the way. Earlier his duty time was 9 AM to 5:30 PM. However his duty was fixed from 10 in the evening to 6 in the morning and while returning from his duty he had died while crossing the Nala. The death of his brother according to witness was due to the negligence of company who had failed to provide conveyance. PW2 is Mohmad Aslam Khan Rathor. He has stated that he was posted as security officer of respondent establishment since March, 2016 till December, 2018. He has also stated regarding death of one Ganesh who was travelling on motorcycle and after his duties when he was washed away in Swan River due to flood all of sudden. He has further stated that deceased could have been saved had his shift being changed from night to day. The company according to him did not give any financial benefits to the family of deceased. He also alleged that petitioner and others had never misbehaved with the establishment nor hurled any abuses. Petitioner and other were pressing their demands in a peaceful manner. Inquiry Officer in the case of the petitioner and others was Navin Thakur who was an advocate of the company. The petitioner has produced his affidavit Ext. PW3-A wherein he has reiterated the facts stated in the petition and also produced on record appointment letter Ext.PW3/B, increment letter PW3/C, another letter Ext. PW3/D, letter dated 24.1.2018 Ext. PW3/E.

8. Respondent in order to prove their case had examined Shri Navin Thakur as RW1. He has produced on record his affidavit Ext. RW1/A as well as inquiry report Ext. RW1/B and statements of as many as four witnesses Exts. RW1C1 to C4, letter dated 27.2.2018 Ext. RW1/D and letter Ext. RW1/E. RW2 Shri Sachin Thakur is the HR Manager of the respondent company has produced his affidavit Ext. RW2/A. He has reiterated the facts stated in the reply. He also produced on record letters received from security officer Ext. RW2/B to Ext. RW2/O and appointment letter Ext. RW2/P. RW3 Shri Rarvinder Singh, Security Officer, M/s Coslight India Telecom Pvt. Ltd. has stated on oath that the petitioner along-with other persons mentioned in the affidavit that petitioner along with other persons raised derogatory slogans against the respondent. Regarding this security department wrote several letters to the management of M/s Coslight India Telecom Pvt. Ltd. RW4 Shri Latif Khan as another employee of the company who has stated on oath that he was provoked by the petitioner and other employees to go for strike with them. However since he found that there was no issue of the death of Ganesh in the strike and factory management was ready to compensate to the family member of deceased Ganesh, he did not support the illegal activities using filthy slogans against the management. RW5 Shri Manveer Singh presently working as HR Assistant Manager in Coslight India Telecom Pvt. Ltd. has also stated the facts mentioned in the reply. He produced his affidavit Ext. RW5/A. He also produced on record MOU Ext. RW5/B, charge sheet Ext. RW5/C, termination letter Ext. RW5/D, full and final settlement Ext. RW5/E, show cause notice Ext. RW5/F, domestic inquiry setup Ext. RW5/G, appointment of inquiry officer Ext. RW5/H, charge Ext. RW5/J, charge sheet with termination dated 5.2.108 Ext.RW5/K, terms and conditions Ext. RW5/L, domestic inquiry Ext. RW5/M, authority letter Ext. RW5/N, letter dated 15.5.2018 to deceased Ganesh Ext. RW5/O and letter dated 29.5.2017 Mark-A.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.



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

Issue No. 1 : No

Issue No. 1(A): Yes

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : No

Issue No. 6 : No

Relief : The reference is decided Accordingly

### REASONS FOR FINDINGS

#### *Issue No.1(A)*

11. Learned counsel for the petitioner has argued that the termination of the services of the petitioner were illegal and unjustified. False allegations were made against the petitioner and false charge-sheet on wrong facts was also prepared. The Inquiry Officer Naveen Thakur was under the influence of the company. Enquiry report was prepared in favour of the factory management without appreciating statement of petitioner. The services of petitioner were terminated subsequently without any cause and without complying with the essential provisions of law. On 24.1.2018 the petitioner had shown his willingness to join the company but he was not allowed to do so despite repeated request.

12. Learned Counsel for the respondent has submitted that the services of the petitioner were dispensed after conducting a just inquiry on the charges of gross misconduct. The petitioner had joined the inquiry proceedings. He cross-examined complainant witness and also examined himself in his defence. The termination of petitioner was consequent to the inquiry report which was based on statement of witnesses. The procedure as per law was followed by the Inquiry Officer and there is no circumstances pointed in the inquiry proceedings which would indicate or imply that the principle of natural justice not complied with. Learned counsel for the respondent had further argued that inquiry proceedings being just and proper the termination of the petitioner was legal and justified not in violation of provisions of the Industrial Disputes Act.

13. The onus of proving the issue 1(A) was on the respondent who examined RW1 Shri Naveen Thakur, Inquiry Officer. The report Ext. RW1/B has been produced on record. The allegations against the Inquiry Officer are that the Inquiry Officer did not obtain consent of petitioner to accept him as Inquiry Officer, that he had not given written notice to the petitioner regarding the fact that they could engage counsel of their choice during inquiry proceedings and that he was also representing the company in other cases. The record of proceeding of inquiry reveals that before cross-examining the complainant witness no objections seems to have been raised on behalf of petitioner that he was denied any representative of his choice for the said purpose. Witnesses of complainant was examined and then cross-examined by petitioner himself who also appeared as witness in his defence. Though no notice in writing was actually given to the

petitioner qua his right to engage his counsel, Inquiry Officer mentions in the zimini order and report that he orally told the petitioner qua his right of engaging a representative and no suggestion is made to RW1 Shri Naveen Thakur that he had not informed the petitioner of his right to engage his counsel orally also. The Inquiry Officer was appointed by Vice President of the company *vide* Ext. RW5/G who is also the disciplinary authority. RW1 Shri Naveen Thakur has denied that he looks after the other matters of the company and there is no evidence to prove these allegations. Inquiry Officer has denied that he continued inquiry in a manner suitable for the company. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P. in 2020 LLR 847** has held in para nos. 11 and 12 as follows:—

- “11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :
- “28. The decisions cited above make one thing clear, *viz.*, principles of natural justice cannot be reduced to any hard and fast formulae. As said in *Russell v. Duke of Norfolk* way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called--that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding--which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, *e.g.*, Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate--take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin*). It would be a case falling under the first category and the order of dismissal would be invalid--or void, if one chooses to use that expression (*Calvin v. Carr*). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi*) it would be a case falling in the latter category -- violation of a facet of the said rule

of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, *i.e.*, whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (*i.e.*, adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

\* \* \* \*

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
- (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, *viz.*, whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, *i.e.*, whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

- (4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
- (b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.
- (5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.
- (7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".
- “12. The Supreme Court in the case of *State Vs. N.S. Gnaneswaran* reported in (2013) 3 SCC 594 has held as under :

- “12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v. Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.)”
13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards”.
14. The petitioner in the present case has failed to establish that he was condemned unheard. The management has produced on record all the inquiry proceedings duly participated by the petitioner in order to show that petitioner had faced the just fair inquiry. There are no other specific allegations regarding the violation of principle of natural justice. The facts constituting the inquiry not being in conformity with Model Standing Orders could be raised either in the pleading or evidence produced on behalf of petitioner. The prejudice if any caused to the petitioner with respect to procedure adopted by Inquiry Officer is not clearly proved on record. It cannot be held that inquiry faced by the petitioner is not conducted in just and fair manner. Accordingly issue No.1(A) is decided in the favour of respondent.

#### *Issues No.1 and 2*

15. A specific reference has been issued to this court to determine whether the termination of services of the petitioner Anil Kumar (after conduct of domestic inquiry) without compliance of the provisions of the Industrial Disputes Act, 1947 is legal and justified. As sequel to the findings on issue No.1(A) above now established that the services of the petitioner were terminated on account of proved misconduct in a domestic inquiry.

16. Learned Counsel for the petitioner has vehemently argued that company management had acted vindictively as services of petitioner along-with five other persons were terminated on various allegations and biased inquiry proceedings. The reason for the ill-will was protest made by the petitioner and other worker regarding the non grant of service benefits to the family of deceased worker Ganesh who expired in accident while returning from the company and the demand of workers to make available mode of conveyance/buses so that they can safely return to their home after work.

17. PW3 Mohmad Aslam Khan Rathor has stated on oath that the petitioner and other had not misbehaved with the respondent establishment nor hurled any abuses. Though it has been alleged that the Inquiry Officer Shri Naveen Thakur was also doing that work of the company however there is no documentary evidence produced by the respondent in this regard. He admits that complainant/report Ext. PA was actually written by him and in the light of his assertion that he was acting under pressure, he has admitted, that till date he has not made complaint regarding pressure on him. He also signed documents containing contents of complaint Ext. PA during inquiry proceedings and did not mention about undue pressure on him. In fact this witness admits that he had dispute with company thus his statement to be taken with a pinch of salt.

18. The petitioner has denied the allegations of misconduct and on account his misconduct his services were terminated. Strangely he has stated that he does not remember that on 22.1.2018

he along with other employees namely Manjit Singh, Amit Kumar Bali, Khursheed Mohd. Gaurav Pathak, Rajinder Singh, Rohit Kumar, Anil Kumar, Gaurav Kishore started stopped the employees of the factory forcibly on the main gate of the factory and also forced other employees to sit there. He states that he does not remember that above mentioned persons started unparliamentarily slogans against the management and instigated other employees for strike. With regard to the allegations of abuses and slogans against the management he fails to remember the same. He also feigned ignorance that on 10.6.2017 he had admitted his guilt. Though he took part in the inquiry. He feigned ignorance that letters were issued by the complainant and served upon him. The evidence of both parties reveals that the allegations of misconduct were proved in the enquiry proceedings on the basis of statement of the witnesses. The allegations made in the charge-sheet were defended by the petitioner and he cross-examined the complainant witnesses and also examined himself in defence. Legality of strike is also under the doubt as the witnesses RW3 Ravinder Singh and RW4 Latif Khan deposed that company has taken steps to ensure benefits to the survivor of deceased Ganesh and that the services of the petitioner were terminated on account of proved misconduct in domestic inquiry. Since termination of the petitioner was consequent to the inquiry proceedings and charges of misconduct the same cannot be held to violative of the provisions of the Industrial Disputes Act by the respondent company. Issues no.1 and 2 are decided accordingly in the favour of respondent.

### Issue No.3

19. The petitioner has suppressed that he took part in inquiry proceedings and was examined witnesses of complainant. It has been discussed while deciding issues no.1 and 2 above that the termination of the services of the petitioner was on the conclusion of an inquiry proceedings where the charges of misconduct stood proved against the petitioner. Consequently, the petitioner is not entitled for benefits as prayed.

### *Issue No. 4*

20. The maintainability of the claim petition was challenged on the ground that petitioner had suppressed the actual material facts from this court while presenting the petition. The evidence revealed that just and fair inquiry was carried out by the company on the charges of misconduct against the petitioner. Since the termination of the services of the petitioner was in consequence to the proved charges of misconduct the present claim petition is not maintainable.

### *Issues No.5 and 6*

21. The onus of proving these issues on the respondent. No specific evidence has been led to show that the adjudication of the claim was beyond the jurisdiction of this Tribunal nor the claim petition appears to be barred by limitation hence both issues shall be unpressed.

### *Relief*

22. As a sequel to the above discussion on preliminary issue no.1(A) and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

23. The Hon'ble Supreme Court in Uttar Pradesh State Road Transport Corporation versus GajadharNath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021) has held in para no.5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 1947 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in

terms of Section 11A of the Act. This Court in a judgment reported as *Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.* 5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

“32. From those decisions, the following principles broadly emerge :—

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

- (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
- (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.
- (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal.”

24. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

**“[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

25. Going by the procedure as directed by the Hon’ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

26. Now come up for hearing of both the parties.

Be called after respite.

16.9.2024 Present : Sh. Vinesh Dhiman, Ld. Counsel for the petitioner

: Sh. Neeraj Bhatnagar, Ld. Counsel for respondent

27. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.



28. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case tiled as **U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

29. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs. 50,000/- to petitioner by way of compensation to the petitioner within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 16th day of September, 2024.

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

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

Reference No. : 65/2021  
Date of Institution : 23.3.2021  
Date of Decision : 18.9.2024

Smt. Tara Devi w/o Shri Sher Singh, r/o Village Dohag, P.O. Jarol, Tehsil Sunder Nagar, District Mandi, H.P. . . *Petitioner.*

*Versus*

1. Principal Chief Conservator of Forest (HoFF), Deptt. Of Forest Talland, Milsington Estate, Chotta Shimla, Himachal Pradesh-171002.
2. Addl. Chief Secretary (Forest) HP Secretariat Shimla-02
3. The Divisional Forest Officer, (Research), at Karnody, Sunder Nagar, District Mandi, H.P. . . *Respondents.*

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

For the Petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For Respondent(s) : Sh. Gaurav Keshav, Ld. ADA

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner.

“Whether the alleged termination of services of Smt. Tara Devi w/o Shri Sher Singh, r/o Village Dohag, P.O. Jarol, Tehsil Sunder Nagar, District Mandi, H.P. from time to time during year, 2009 to September, 2019 and finally terminated during September, 2019 by the Divisional Forest Officer (Research), at Karnody, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial disputes Act, 1947, as alleged by the workman is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The brief facts as mentioned in the claim petition are that the petitioner was engaged as daily wager in the year 2009 by the respondent no.3 at Forest Nursery, Jarol, Sunder Nagar (Mandi). She was working there as such till September, 2019 in continuity. It is further submitted that she was paid remuneration/wages out of the funds of State exchequer as such there exists a master servant/employer servant relationship between the petitioner and respondent. Petitioner had worked with the respondents on daily wage basis w.e.f. 2009 till 2015 when the respondents has changed terms and conditions of her employment and converted her employment to bill/quotation/tender basis without complying with the provisions of law. The petitioner was under forcibly condition to work and she was always kept under impression that she is working on daily wage basis. Respondents who has maintained record of petitioner w.e.f. 2/2015 till 9/2019 concealed and destroyed previous record of the employment of the petitioner. Petitioner had obtained information under RTI for her previous record of employment which were not supplied to her. In September, 2019 DFO (Research) i.e. respondent no. 3 retrenched/terminated the petitioner the services of the petitioner without any prior notice and compensation. She visited the office of DFO (Research) to reinstate her services but the respondent no.3 did not concede to her request. Thereafter demand notice was served upon the DFO Suket but the proceeding before the Conciliation Officer were continuously rejected by the respondents and when the proceeding concluded the industrial dispute was raised by the petitioner which has been sent for adjudication before this court. It is alleged on behalf of the petitioner that the respondents not only illegally

terminated her services but also engaged juniors which was against the principle of 'last come first go'. Respondents have always had sufficient work with them but they did not re-engage her which was against the established principle of law. It is also alleged that the respondents had changed service conditions of the petitioner without prior notice as such change of service conditions was neither any outcome of settlement nor any award but was on account of unilateral conduct of the respondents. It is prayed that in these circumstances the termination order dated 9/2019 of the services of the petitioner may be set aside and declared as illegal and the respondents be directed to reinstate the petitioner in her employment. The change of service condition of the petitioner from daily wages basis to bill/tender/quotation be declared as illegal and she be considered as daily wage work for all the benefits. The artificial terminal breaks *w.e.f.* 2009 till termination may be declared as illegal and the said time period can be counted in the daily wage employment of the petitioner. It is also prayed that the respondents be directed to consider daily wage employment of the petitioner *w.e.f.* 2009 on muster roll basis till she completed 7 years of her daily wage period making her for work charge and regularization as per policy of the State. She had also prayed for all consequential benefits.

3. The respondents in their reply raised preliminary objections *qua* mis-joinder of necessary parties, maintainability, department not fall within the definition of industry, petitioner not being a workman and suppression of material facts on behalf of respondents. On merits, it is asserted that Forest nursery at Ropari was transferred from territorial Suket Forest Division Sunder Nagar, District Mandi to the control of Divisional Forest Officer (Research) Sunder Nagar, District Mandi, H.P. vide Principal Chief Conservator of Forests Himachal Pradesh office order No. 97/2010 dated 18.1.2020. The petitioner has executed only seasonal forestry work at Ropari purely on bill/quotation basis except for the month of 7/2012, 8/2012, 9/2012 and 1/2014 works were executed on muster roll basis. Forest department Mandi Forest Circle as per the availability of work and funds had employed her. As per directions of Government of H.P. department of Personnel letter No. PER (AP-II)B(2)5/86-III dated 11th July, 1995 no fresh recruitment of daily wage muster roll workman was made in the department/board/corporation/university without approval of the Government from finance department. It is clarified that for filling up of post by way of direct recruitment or by any other method depended upon availability of necessary post. In case a post was available it would be necessary to get the post created by obtaining approval of Finance Department and Council of Ministers. Respondents assert that petitioner has done only seasonal forestry works as per availability of work and funds and instructions issued by the government from time to time. She has not worked on daily wage basis with the respondents but was merely doing some seasonal works. It is also alleged that petitioner has worked purely on quotation/bill basis under the Forest Research Division Sunder Nagar. It is denied that petitioner was an employee of respondent department and month/year-wise detail of payments has been mentioned in the reply. Other averments made in the petition have been denied para-wise and it is prayed that the petitioner is not entitled for the reliefs as prayed in the petition.

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

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

1. Whether giving fictional breaks/termination of services of the petitioner time to time during year 2009 to September 2009 by the respondent against the provisions of the Industrial Disputes Act, 1947 is liable to be condoned? . . . *OPP.*
2. Whether final termination of the services of the petitioner by the respondents during September, 2009 is/was illegal and unjustified as alleged? . . . *OPP.*

3. If issue no.1 and issue no. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
5. Whether the petition is bad on account of delay and laches as alleged? . . . *OPR.*
6. Whether the petitioner has not come to the court with clean hands and suppressed material facts from the court as alleged? . . . *OPR.*
7. Whether the petition is bad for misjoinder of the party as alleged? . . . *OPR.*

Relief.

6. The petitioner in order to prove her case produced her affidavit Ext. PW1/A wherein she reiterated the fact stated in the petition and also proved on record information under RTI from respondent department Ext. PW1/B. Petitioner has also examined PW2 Shri Sunder Singh who has mentioned in his affidavit that he was engaged as daily wager in the year 1998 by the Divisional Forest Officer Sunder Nagar, District Mandi at forest nursery Jarol (Ropari) Beat of Sunder Nagar (Mandi HP). He was working there as daily wager till 2014 with continuity of service. He got regularization in the year 2014 and retired on 12/2021. He has further stated that Smt. Tara Devi w/o Shri Sher Singh was engaged in the year 2009 as daily wage employee by the DFO Suket Forest Division Sunder Nagar, District Mandi, H.P. at its forest nursery Jarol (Ropari). He had worked there as daily wager during relevant time. Smt. Tara Devi (petitioner) was also got transferred to the office of DFO (Research) Sunder Nagar, District Mandi (HP) as daily wager. She worked as daily wager employee till his regularization and never worked on tender/bill/quotation basis with DFO (Research) Sunder Nagar. He has also produced the copies of muster roll obtained under RTI Ext. PW2/B1 to B6, another muster rolls also obtained under RTI Ext. PW2/C1 to C2.

7. Respondent has examined Shri Surender Singh, Divisional Forest Officer, Forest Research Division Sunder Nagar, District Mandi as RW1 and he has reiterated the facts stated in the reply by way of affidavit Ext. RW1/A. He also produced on record copy of seniority list Ext. RW1/B, copy of office order dated 18.1.2010 Ext. RW1/C, copy of common schedule of work and labour rates for 1998-1999 Ext. RW1/D, schedule of work and labour rates for 2012-2013 Ext. RW1/E, copy of notification dated 11.7.1995 Ext. RW1/F, copy of letter dated 8.7.1998 Ext. RW1/G, copy of quotation Ext. RW1/H, copy of quotation Ext. RW1/J, copy of bill Ext. RW1/K, copy of bill Ext. RW1/L, copy of muster rolls Ext. RW1/M1 to Ext. RW1/M4 and copy of quotation and bills Ext. RW1/N1 to Ext. RW1/N52.

8. I have heard the learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and records perused.

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

- |             |                       |
|-------------|-----------------------|
| Issue No. 1 | : Yes                 |
| Issue No. 2 | : Yes                 |
| Issue No. 3 | : Decided accordingly |
| Issue No. 4 | : No                  |

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

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

### REASONS FOR FINDINGS

#### *Issues No.1 and 2*

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

11. The petitioner has alleged that she was engaged as daily wager from 2009 to 2015 in the forest Nursery Jarol (Mandi) H.P. and that her employment was converted to bill basis/quotation basis/tender basis without complying with the provisions of the Industrial Disputes Act, 1947. PW2 Shri Sunder Singh has also alleged that he was engaged in the year 2009 and regularized in the year 2014 at Suket Forest Division Sunder Nagar. He also mentions that petitioner was employed on daily wage basis in Suket Forest Division during the period that he was rendering his services with the respondents. She kept on working on daily wage basis till his regularization. With the merger of Jarol Nursery with DFO (Research), Sunder Nagar, DFO (Research) accepted the daily wager employee at nursery DFO (Research) He also states that till his transfer from the said place in 2009 Tara Devi had been working as daily wager employee.

12. The version of the respondents is that petitioner has not worked on daily wage basis with the respondent department she had worked only in seasonal forestry work at Ropari purely on bill basis except for 7/2012, 8/2012, 9/2012 and 1/2014 when the work was executed on muster roll basis. The petitioner and PW2 Sunder Singh have alleged that petitioner was engaged on daily wage basis since the year 2009 by DFO Suket Forest Division Sunder Nagar at forest nursery Jarol. It is an admitted fact that in the year 2010 forest nursery Jarol (Ropari) merged with office of DFO (Research) Sunder Nagar. It is the contention of the petitioner and PW2 Shri Sunder Singh at that time daily wager workers also got transferred to DFO (Research) Sunder Nagar. The respondents only acknowledged the work of petitioner on muster roll pertaining the month of 7/2012, 8/2012, 9/2012 and 1/2014. They also assert that she has executed the work at Ropari nursery provisionally on quotation and bill basis.

13. PW2 Shri Sunder Singh corroborated the contention of the petitioner that she worked as daily wager at Jarol nursery since the year 2009. No such record of the work done by the petitioner prior to 2012 was produced by the respondents. RW1 Shri Surender Singh, DFO Forest (Research) has stated that prior to 2012 also the petitioner has worked on bill/tender basis and he denied that she was on muster roll basis from very beginning. Though the respondent have produced muster rolls of year 2012 and 2014 and also bills and quotations subsequently however bill/tender prior to the year 2012 are not produced even though RW1 Shri Surender Singh has mentioned that the petitioner was working with the respondents department prior to the year 2012 though on bill basis. Thus important record pertaining to the work being done by the petitioner from 2009 to 2012 has been concealed/suppressed by the respondents. In these circumstances this court is constrained to draw an adverse inference against the respondents that they intentionally suppressed the work done record of the petitioner prior to the year 2012. As already mentioned the petitioner as well as PW2 Shri Sunder Singh deposed that petitioner was engaged on muster roll basis from the year 2009. The muster rolls Ext. RW1/M1 to Ext. RW1/M4 clearly show that from

June, 2012 to September, 2012 the petitioner was employed on daily wage basis but subsequently as per bills Ext.RW1/N1 to Ext. RW1/N52 the services conditions of the petitioner was changed from daily wages to bill/quotation/tender basis. RW1 Shri Surender Singh, DFO has admitted that last muster roll of the petitioner was shown in the year 2014. He also admits that in January, 2014 when the work was given to the petitioner on bill basis no notice of change in the service condition was given to her. Section 9A of the Industrial Disputes Act, 1947 produced as follows:—

“9A. Notice of change.- **No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or (b) within twenty-one days of giving such notice:Provided that no notice shall be required for effecting any such change-(a)where the change is effected in pursuance of any [settlement or award] [Substituted by Act 46 of 1982, Section 6, for certain words (w.e.f. 21.8.1984).]; or(b)where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply”.**

14. It is evident that condition of the service of the petitioner were being changed from daily wagger to bill basis and again daily wages and bill basis. No notice was ever issued to the petitioner who has mentioned that she is an illiterate person. The record shows that the respondents have deliberately given fictional breaks in the continuous employment of petitioner from the year 2009 to the year 2019. There is no evidence produced by the respondents to show that they were lacking availability of work and funds during this period. The conduct of the respondents in giving deliberate fictional breaks in the services rendered by the petitioner amounts to unfair labour practices in Vth Schedule of the Industrial Disputes Act, 1947 especially when PW2 Shri Sunder Singh who joined along with the petitioner was regularized and also retired from the said department. Hon’ble High Court of H.P. in Ram Singh vs. State of Himachal Pradesh and others in CWP NO.789 of 2024, decided on 4.7.2024 has observed in para nos. 5 and 6 as follows:—

“5. It is not in dispute that the petitioner is serving with the respondents-Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of “bill basis” but, fact of the matter still remains that be it a daily wagger or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.

6. This Court of the considered view that the distinction, which is now being created by the respondents- Department between a daily wage worker and a bill base worker is violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India.

15. While changing the service condition of the petitioner unilaterally department had given fictional breaks to her. The respondents deliberately failed to keep a record of her mandays. It

is however established that she continued to work till the year 2019. Since the respondents failed to keep of record mandays attributed to the work done by the petitioner an adverse inference was drawn against the respondent. It can be gathered that she had completed 240 days even in the year preceding her termination that is the year 2019. Pertinent to mention, even though the respondent has alleged that petitioner had left the work at her own will no notice appears to have been issued to the petitioner by the respondents to rejoin the work with the respondents. In the light of the above evidence it is established that respondents had given fictional breaks/and terminated the services of the petitioner time to time from 2009 to year 2019 and finally in the year 2019 in a illegal and unjustified manner. Thus issues no.1 and 2 are decided in the favour of petitioner.

### *Issue No. 3*

16. It has been proved from the evidence of the case file that the petitioner had rendered her services with the respondents department since the year 2009. Despite admitting the fact that she was working with the respondents department no record of the work done by her could be produced by the respondents from the year 2009 to 2012. The records further revealed that she is shown to have worked on daily wage basis for four months in the year 2012 and one month in the year 2014. Subsequently the record shows that she was made to work on bill basis/quotation basis. The change in the service condition of the petitioner was unilateral and against the provisions of the Industrial Disputes Act hence illegal and unjustified. In these circumstances the petitioner is held entitled for reinstatement in the respondent department from the date of her termination. She also entitled for compensation to the sum of Rs.50,000/- in lieu of back wages. She is further entitled for all the consequential service benefits considering her initial employment on daily wage basis from the year 2009. Issue no.3 is accordingly decided in the favour of the petitioner.

### *Issues No. 4, 5, 6 and 7*

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

18. The onus of proving these issues on the respondents. The maintainability of claim petition was challenged on the ground that the petitioner had merely worked on bill basis however evidence revealed that condition of her services were being changed unilaterally against the provisions of the Industrial Disputes Act. The petitioner has raised the dispute within requisite period and petition could not be held to be bad on account of delay and laches. Nothing could be produced in the evidence to show that the petitioner has suppressed the facts which were necessary for the adjudication of the case neither it is established that the petition was bad for misjoinder of necessary party. Accordingly issues no. 4 to 7 are decided in the favour of the petitioner and against the respondents.

### *Relief*

19. In view of my discussion on the issues no. 1 to 7 the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement in the respondent department from the date of her termination and all consequential benefits considering her date of her initial employment in the year 2009. She is also entitled for compensation to the sum of Rs.50,000/- in lieu of back wages along with interest @ 6% from date of illegal termination in year 2019 till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 18th day of September, 2024.

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

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

Reference No. : 322/2016

Date of Institution : 26.5.2016

Date of Decision : 18.9.2024

Shri Amit Kumar s/o Shri Ram Rattan, through Shri B.S. Verma, Vice President, INTUC, H.P. State Committee, District Bilaspur, H.P. . . *Petitioner.*

*Versus*

The Pradhan, the Bilaspur District Truck Operator Co-Operative Transport Society Limited (BDTS), V.P.O. Barmaana, Tehsil Sadar, District Bilaspur, H.P. . . *Respondent.*

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

For the Petitioner : Sh. B. S. Verma, Ld. Adv.

For Respondent : Sh. Ashwani Mahajan, Ld. Adv.

**AWARD**

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

“Whether termination of the services of Shri Amit Kumar s/o Shri Ram Rattan, through Shri B.S. Verma, Vice President, INTUC, H.P. State Committee, District Bilaspur, H.P. w.e.f. 14-09-2014 (as alleged by workman) by the Pradhan, the Bilaspur District Truck Operator Co-Operative Transport Society Limited (BDTS) V.P.O. Barmana, Tehsil Sadar, District Bilaspur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner was engaged as a workman/clerk with the respondent since 27th December, 2012 and he remained working till his removal from service from 14.9.2014. It is alleged that petitioner was restrained from attending his duties without any cogent reason. He worked about for 2 years with a neat and clean record and continuous service for the purpose of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter



referred to as 'the Act' for short). He had worked for more than 240 days of the calendar year preceding his termination. It is also alleged that respondent arbitrarily and without conducting any inquiry terminated the services of the petitioner in an illegal manner. No notice of retrenchment neither any compensation was paid to the petitioner. The oral order of removal from the services were not speaking order and the refusal of the respondent to allow the petitioner from working beyond 14.9.2014 amounted to unfair labour practice. It is also alleged that the services of the junior workmen in the same establishment were retained by the respondent while terminating the services of the petitioner in violation of Section 25-G of the Act. In these circumstances the petitioner has prayed that his services may be reinstated with the respondent from retrospective effect *i.e.* 14.9.2014 along-with full back wages, seniority and other consequential service benefits.

3. Respondent by way of reply raised preliminary objections qua maintainability, lack of jurisdiction, cause of action, non-joinder and mis-joinder of necessary parties and the petitioner not possessing locus standi to file the petition. On merits, it is asserted that BTDS is a society created under Societies Registration Act vide serial no.70 dated 16.12.1983 with the Registrar Co-operative Societies Bilaspur, H.P. Society had never engaged the petitioner as an employee nor management committee passed any resolution regarding the employment of the petitioner which was mandatory for appointment in the society. It is also denied that the petitioner has worked for two years and completed 240 days in each year. According to respondent petitioner was never engaged by them hence there does not arise any question of retrenchment or termination. In-fact society had never paid any compensation to Shri Amit Kumar (petitioner) nor paid any wages or salary to the petitioner at any point of time. Other averments made in the petition were denied and it is prayed that the petition may be dismissed.

4. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

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

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 14-09-2014 is/was illegal and unjustified as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? .. *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR.*
4. Whether this court has no jurisdiction to file the present case as alleged? .. *OPR.*
5. Whether the petitioner has no cause of action to file present case as alleged? .. *OPR.*
6. Whether the petition is bad for non-joinder of the necessary parties as alleged? .. *OPR.*
7. Whether the petitioner has no locus standi to file the present case as alleged? .. *OPR.*

Relief.

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. He has also produced on record gate pass Ex. PW1/B, goods receipt Ex. PW1/C, copies of freight Mark P-1 to P-11 and revision of freight Mark P-12. Petitioner has also examined Shri Raj Pal Gautam as PW2. He has stated that he was Secretary of the respondent society from March, 2012 till September, 2014 and petitioner was deployed to keep record of arrival and departure of trucks of respondent society at Bagha. Petitioner used to bring G. Rs. and deposited the same with the respondent society. Petitioner worked for 2 years and he was not paid any remuneration. He was kept an apprentice so that he could learn how the work. PW3 Shri Atul has stated that he had worked as clerk in BDTS Barmana since 1992 and bill Mark P-1 to P-11 now exhibited as Ext. PW3/A to Ext. PW3/K bears his signatures. He has also stated that some of the vehicles used to go to cement plant Bagha for loading cement. He is not able to state whether the petitioner was employee of the society or not. PW4 Shri Virender Singh has stated that he has worked in BDTS Barmana as an Accountant however petitioner is not known to him and petitioner has not worked in the society. PW5 Shri Lekh Ram Verma has stated that he was Pradhan of BDTS from 2012 to 2014 and the carriage work of cement looked by BDTS. Work was allotted to them in JP Cement Udyog also. BDTS has engaged the petitioner as daily wage worker to do documentation for the respondent at JP Udyog Cement. He was engaged on 27.12.2022. The documents proved on the record are documents of BDTS and the petitioner was engaged on daily wage basis during his tenure between 2012 to 2014.

7. Respondent has examined Shri Virender Singh as RW1 who has stated on oath that he worked with respondent since the year 1999 to 2022 and had now retired. The petitioner was not known to him nor he had ever seen the petitioner working with the society. No payment was ever made to the petitioner as wages. He has not seen the petitioner during his service in the establishment. He further stated that the employees are engaged by the society through resolution and interview is also conducted. Shri Nand Lal as RW2 has stated on oath that he had worked as Secretary in BDTS Barmana. As per record petitioner Amit Kumar was not employee of the society. In accordance with the bye-laws of society no employees are kept on job without any resolution and notification as well as interviews.

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

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

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

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

**REASONS FOR FINDINGS***Issue No.1*

10. The petitioner had raised demand vide demand notice before Conciliation Officer and consequent to which the reference with regard to illegality of termination of his services from Bilaspur District Truck Operator Co-operative Society, Bilaspur was referred to this court. The petitioner has stated on oath that he was working as a clerk with the respondent society and carrying on various activities. He has produced on record the gate pass Ext. PW1/B, goods receipt Ext. PW1/C copies of which have been proved by PW3 Shri Atul, Clerk of BDTS as Ext. PW3/A to PW3/K and revision of freight Mark-P12. PW3 Shri Atul has not stated that the petitioner was kept an employee by BDTS however he has admitted his signatures on the bills Ext. PW3/A to Ext.PW3/K.

11. Respondent on the other hand had completely denied that the petitioner was ever an employee in their society. Respondent has also asserted that no process for the creation of post of clerk was carried out neither any appointment letter was issued nor any interview was conducted for employing the petitioner. They also assert that there is no record of any payment being made to the petitioner during time period alleged by the petitioner.

12. The petitioner on the other hand has examined two material witnesses of society itself. PW2 Shri Raj Pal Gautam has stated on oath that he was Secretary of the respondent society from March, 2012 till September, 2014 and at that time the pradhan of society was Mr. Lekh Ram Verma. He however submits that there were eleven members of the management and Amit Kumar (petitioner) was deployed to keep record of arrival and departure of trucks of society at Bagha. He however states that petitioner Amit Kumar might have worked for two years. This statement made by Shri Raj Pal Gautam corroborated by PW5 Shri Lekh Ram Verma. PW5 Lekh Ram Verma has deposed on oath that he was Pradhan of BDTS in between 2012 to 2014 and he further states that the carriage work of cement was looked after by BDTS and work was allotted to them in JP Udyog also. It clearly states that BDTS had engaged the petitioner to do documentation work for the respondent at JP Udyog cement. He also stated that petitioner was paid on daily wages basis during his tenure between 2012 to 2014. PW2 Shri Raj Pal Gautam has also stated regarding employment of petitioner from 2012 to 2014 and according to him petitioner was not paid any remuneration. He was kept as apprentice. It is important that in the cross-examination of PW2 Shri Raj Pal Gautam no suggestion has been made to the effect that the petitioner was not kept an apprentice nor he was worked for society for two years. Similarly cross-examination in the Lekh Ram Verma does not suggest that the petitioner had not worked in the society for two years. The cross-examination of these witnesses however shows that nor any interview was taken nor the post was advertised after passed resolution by the society. Nonetheless the fact that the petitioner had worked in the respondent society for about minimum of 240 days in two years between 2012 to 2014 is clear from the statement of PW2 Raj Pal Gautam and PW5 Lekh Ram Verma. The Industrial Disputes Act described at Section 2 Clause (2) defines as follows:—

“2(s) ["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [ *Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).*](i)who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or(ii)who is

employed in the police service or as an officer or other employee of a prison, or(iii)who is employed mainly in a managerial or administrative capacity, or(iv)who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

13. A careful perusal of the above definition that workman meaning includes apprentice. It clearly implies that even if there is no record of payment of daily wages made by the respondent to the petitioner for specified period he was still working for the respondent in the capacity of apprentice for learning his job. PW2 Raj Pal Gautam has very clearly stated that he was kept as an apprentice so that he could learn how to work and thereafter they wanted to appoint him in the respondent society. RW1 Shri Virender Singh has appeared in the witness box denying that the petitioner was ever engaged by the respondent society in accordance with the procedure and rules of the society engaged through resolution and interview. He however admits in his cross-examination that he has not taken any interview nor he was member of any selection committee. He also admitted that he does not issue appointment letter and is merely looking after accounts of the respondent. He is looking after financial matter of the respondent as a clerk. Similarly RW2 Shri Nand Lal has deposed in his cross-examination that respondent company had 1½ - 2 % shares in Ultra Tec Cement Company and their trucks to carry the cement of ultra tech to different places/locations. He has also admitted that he was not a part of any selection process conducted by the respondent, Thus both the witnesses produced on behalf of the respondent were not involved in any interview being conducted by the respondent for the appointment of their employees. On the other hand the petitioner has produced witnesses who are Secretary and Pradhan of BDTs who are directly concerned with appointment of employees of the society. It is proved from the overwhelming evidence that petitioner had worked with the respondent society from 2012 to 2014. Though there is no record that the remuneration being paid to him he was kept as apprentice. PW 5 Lekh Ram Verma has stated that petitioner was being paid on daily wage basis during his tenure between 2012 to 2014. In these circumstances the petitioner falls within the definition of workman under the Industrial Disputes Act. The termination of his services have been in violation of the provisions of Section 25-F of the Act. The record reveals that while dispensing with the services of the petitioner neither one month's notice nor retrenchment compensation was given to him nor wages in lieu of such notice were ever paid. It is also clear that no notice in the prescribed manner was served on the appropriate government also. The disengagement of the services of the petitioner by the respondent was illegal and unjustified and in violation of the provisions of the Act. Accordingly issue no.1 is decided in the favour of petitioner.

#### *Issue No.2*

14. Respondent has not produced any record with respect to employment of the petitioner with the respondent. It is however established that petitioner was illegally terminated from his services *w.e.f.* 14.9.2014. As stated by PW5 Shri Lekh Ram Verma the then Pradhan of BDTs, petitioner was being paid on daily wage basis. Thus the petitioner is not only entitled of reinstatement of his service on daily wage basis from 14.9.2014 but also entitled to compensation of Rs. 50,000/- in lieu of back wages from 14.9.2014 till the reinstatement of his services. Issue No. 2 is decided accordingly.

#### *Issue No.3*

15. The maintainability of the petition was challenged primarily on the ground that the petitioner was not an employee or workman of the respondent. The evidence on record revealed facts to the contrary hence the petition is maintainable. Hence this issue is decided in the favour of petitioner.

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*Issue No.4*

16. Learned counsel for the respondent has vehemently argued that the petitioner is shown to have been employed by BDTS at Bagha which falls within jurisdiction of District Solan, thus the present reference is beyond the jurisdiction of this court for the purpose of adjudication. It is pertinent to mention here that BDTS society is located at Bilaspur in District Bilaspur. The statement of witnesses reveals that though the petitioner was employed by BDTS Bilaspur bringing GRs from Bagha but he was not only working in Bagha but also in the society registered at Bilaspur thus this Tribunal has the jurisdiction to decide the reference. Issue no.4 is decided in the favour of petitioner.

*Issues no. 5, 6 and 7*

17. All these issues shall be taken up together for adjudication. The petitioner has proved from overwhelming evidence that he was working as clerk with respondent society. In these circumstances he has cause of action and locus standi to raise the dispute with regard to his illegal termination by the respondent. No evidence has been led on behalf of the respondent to establish that there were any other necessary party to present dispute. Hence issues no.5 and 6 are decided in the favour of the petitioner and against the respondent.

*Relief*

18. In view of my discussion on the issues no. 1 to 7 the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement in the respondent society as a clerk from the date of his termination. He is also entitled for compensation to the sum of Rs.50,000/- in lieu of back wages along with interest @ 6% from date of illegal termination in year 2014 till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 18th day of September, 2024.

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

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

Reference No. : 93/2019

Date of Institution : 29.08.2019

Date of Decision : 19.09.2024

Sh. Jai Ram s/o Sh. Dakhu Ram, r/o Village Girjanu, P.O. & Tehsil Karsog, District Mandi, H.P. through Shri Sunder Singh Sippy, General Secretary, All H.P.P.W.D and I & P.H. Workers Union, r/o House No. 100/3, Raura Sector-2, District Bilaspur, H.P. . . *Petitioner.*

*Versus*

The Principal, Government Degree College Karsog, District Mandi, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Raj Kumar, Ld. Adv.

For Respondent : Ms. Diksha Verma, Ld. A.D.A.

**AWARD**

The following reference has been received by this court for the purpose of adjudication from the appropriate Authority.

“Whether the demand of Shri Jai Ram s/o Shri Dakhu Ram, r/o Village Girjanu, P.O. & Tehsil Karsog, District Mandi, H.P. through Shri Sunder Singh Sippy, General Secretary, All H.P.P.W.D and I&P.H. Workers Union, r/o House No. 100/3, Raura Sector-2, District Bilaspur H.P. who was appointed as daily wages sweeper regarding regularization of his daily wages services *w.e.f.* 01.05.2015 as per Government Policy to be fulfilled by the Principal, Government Degree College Karsog, District Mandi, H.P. is legal and justified? If yes, to what relief, service benefits above workman is entitled to from the above employer?”

2. The brief facts stated in the claim petition are that the petitioner is working in the Government Degree College, Karsog *w.e.f.* 15.07.2002 on part time basis and continued on part time basis till 30.06.2006. Thereafter services of the petitioner were engaged for full time basis from 01.07.2006 onwards. The petitioner is thereafter employed on daily wage basis. The petitioner has completed a period of 8 years from 01.07.2006 to 01.07.2014 on daily wage basis for the purpose of regularization. Thus, in accordance with the directions given him in CWP No. 4999/2010 titled as Som Nath vs. State of H.P. & Others by the Hon’ble High Court of H.P. The petitioner is also entitled for regularization of his services. The petitioner alleged that despite 18 years of service the same has been disregarded by the respondent as his name has not been considered for the purpose of regularization. The respondent is violating the mandate given by the Hon’ble High Court in CWP No. 4999/2010. He has prayed that his services may be regularized after completion of 8 years of service as daily wages.

3. Respondent in his reply raised preliminary objections qua maintainability, suppression of material facts, claim petition being bad for delay and laches and estoppel etc. On merits, it is asserted that the petitioner is rendering his services as sanitation worker at Govt. Degree College Karsog. However, his services were engaged only on a temporary and honorarium basis out of the student fund. He was engaged in July 2002 till February, 2008 hourly basis worker out of the Amalgamated Fund which is collected from the students and not a Government fund. On audit objection, the payment of honorarium to the petitioner was stopped from the Amalgamated fund. After resolution of local PTA body dated 9th August, 2014 the petitioner was paid honorarium out of local PTA fund which is collected by the parents. Decision of the PTA was taken in view of the urgency of cleanliness in the College campus. The petitioner is still working on honorarium basis. No financial aid is being made by the Government. Thus, CWP No. 4999/2010 titled as

Som Nath Vs. State of H.P. & other is not applicable of this case. It is asserted that there is no sanctioned post of sanitation worker or sweeper. It is prayed that the present petition being devoid of any merits, the petition be dismissed.

4. On the basis of the pleadings of the parties, the following issues were framed on 25.03.2022 for adjudication and determination:—

1. Whether the demand of the petitioner for his regularization is legal and justified? .. *OPP.*
2. Whether the petition is not maintainable? .. *OPR.*
3. Whether the petitioner has not come to the Court with clean hands? .. *OPR.*
4. Whether the claim petition is bad on account of delay and latches? .. *OPR.*
5. Whether the petitioner is estopped by his own act and conduct from claiming the relief? .. *OPR.*
6. Relief.

5. The petitioner in order to prove his case stepped into witness box as PW1. He has stated on oath that he was engaged on 15.07.2002 as part time sweeper and worked as such till June, 2006, thereafter his services were converted to daily wages. He continuously worked with the respondent for 8 years till the year 2014. He requested to the respondent to regularize his services but his services were not regularized despite request. He worked for more than 240 days in each calendar year as daily wager. He produced copy of letter dated 3.1.2019 Ext. PW1/A, notification dated 21.04.2008 Ext. PW1/B, working details of petitioner Ext. PW1/C and copy of proceedings for the year 2014-15 Ext. PW1/D.

6. Respondent has examined Sh. Jagjit Singh Patiyal, Principal, Govt. College Karsog by way of affidavit Ext. RW1. He has also produced on record mandays chart Ext. R-1, Voucher/audit objection Ext. R-2, proceedings of PTA General House Body for 2014-15 Ext. R-3 in evidence.

7. I have heard the learned Counsel for the petitioner as well as learned A.D.A. for the respondent at length.

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

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Yes

Issue No. 4 : Unpressed

Issue No. 5 : Unpressed

Relief. : Claim petition stands dismissed and reference is decided accordingly.

### REASONS FOR FINDINGS

#### *Issue No.1*

9. The petitioner has asserted in his petition that initially he was engaged on part time basis on 15.07.2002 till 30.06.2006. Subsequently, after 01.07.2006 he is working as daily wager basis after completion of 8 years service till 2014. Contrary to this, respondent alleged that the petitioner was earlier working as part time sweeper out of Amalgamated fund collected from the students which is not Government fund. After 09.08.2014 from the resolution of PTA body he is being paid honorarium from PTA Fund. No sanctioned post of sweeper was vacant when his service was engaged. Petitioner admitted that he has paid on hourly basis in the beginning. He is not aware of the fact that payment was being made from student fund. He admitted that his name was not sponsored by the employment exchange. He has shown ignorance to the fact that his daily wages payment was made from the student amalgamated fund. There is no record produced before this Court by either of the parties to prove that there was sanctioned post of sweeper in Government Degree College Karsog and petitioner has worked on the said sanctioned post as a daily wager for requisite period of time. No doubt, the petitioner was employed as sweeper initially on part time basis and subsequently on daily wager basis. However, there was no sanctioned post of Sweeper in the Government Degree College Karsog. This fact is clear from RTI information obtained from the concerned college. Mandays chart produced on the case file shows that the petitioner has worked more than 240 days in a calendar year preceding the date of demand notice given. However, it is clear from Ext. PW1/B that payments were being made to the petitioner from funds generated by parents of the college student *i.e.* Parent Teacher Association. But the Hon'ble High Court of H.P. in CWP No. 4999/2010 had given directions of the regularization of daily wager in the various department. However, in the present case the petitioner had worked in the Government Degree College, Karsog where there is no sanctioned post of sweeper. The Supreme Court of India in case of Union of India vs. Ilmo Devi, AIR 2021 Supreme Court 4855, AIRONLINE 2021 SC 864 has held in para No. 8.5 as follows:

“8.5 Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so. In the case of R.S. Bhonde and Ors. (supra), it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done.”

10. In these circumstances of present case also in absence of any sanctioned post the petitioner cannot claim benefit of regularization. Thus, issue No.1 is decided in favour of the respondent.

#### *Issue No.2*

11. The onus of proving this issue of the respondent the maintainability was challenged on the ground that the petitioner was not appointed with the respondent on sanctioned post and his wages were not being paid out of Government fund. It is proved that the petitioner was being paid out of Amalgamated fund arranged by the students and PTA. Hence, present petition for regularization is not maintainable.



*Issue No.3*

12. The petitioner has not brought to the knowledge of the Court that the post with the respondent to which is laying of claim of regularization has not been sanctioned by the Government of H.P. Hence, the petitioner has not approached the Court with clean hand and issue No. 3 decided in favour of the respondent.

*Issues No.4 & 5.*

13. Onus of proving issues of the respondent no evidence has been led, neither any arguments have been forwarded in order to prove the above issues. Hence, issues No. 4&5 shall remain un-pressed.

*Relief*

14. In view of my findings on the issues no. 1 to 5 above, the claim preferred by the petitioner does not deserve to be allowed by this Court.

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

Announced in the open Court today, this 19th day of September, 2024.

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

—————

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

Reference No. : 44/2019  
Date of Institution : 22.04.2019  
Date of Decision : 20.09.2024

Shri Brij Lal s/o Sh. Bhagat Ram, r/o House No. 318/3, Jail Road, Mandi, Tehsil & District Mandi, H.P. . . *Petitioner.*

*Versus*

(i) The Director, Town and Country Planning, Department, Yojna Bhawan, SDA Complex, Vikas Nagar, Shimla, H.P.

(ii) The Town and Country Planner, Town and Country Planning Division Mandi, Tehsil & District Mandi, H.P. . . *Respondents.*

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

For the Petitioner : Sh. R.K. Bhardwaj, Ld. Adv.

For Respondents : Sh. Anish Thakur, Ld. A.D.A.

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner.

“Whether the termination of services of Shri Brij Lal S/O Shri Bhagat Ram, R/O House No. 318/3, Jail Road, Mandi, District Mandi, H.P. during June, 2001 by (i) the Director, Town and Country Planning Department, Yojna Bhawan, SDA Complex, Vikas Nagar, Shimla, H.P. (ii) the Town and Country Planner, Town and Country Planning Division Mandi, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified?. If not, what amount of back wages, seniority, past service benefits including regularization and compensation the above aggrieved workman is entitled to from the above employer?”

2. The brief facts of the claim petition are that the services of petitioner were engaged as a Chainman *w.e.f.* 15.11.1996 on part time basis for 4 hours daily and thereafter he was engaged on daily wages *w.e.f.* 27.11.1997 and continued to 22.07.1998. Subsequently he was engaged again as part time Chainman for 4 hours daily *w.e.f.* 15.11.1998 upto 15, 1999. At that time the applicant's work time was reduced to 2 hours in a day which was enhanced for 4 hours *w.e.f.* 26.12.2000. The petitioner has made a representation to the State of H.P. through the Secretary, Town Planning Shimla to regularize the services but the representation of the applicant was rejected by the State Town Planner, Town & Country Planning Department, Shimla-171009. The applicant thereafter knocked the doors of the Hon'ble High Court of Himachal Pradesh by filing the CWP(T) No. 7329 of 2008 which was decided on 9th December, 2010 whereby the Hon'ble High Court of H.P. *vide* order dated 09.12.2010 directed the State of H.P. and another to confer the status of daily wages of the petitioner within the period of two months from the date of production of a certified copy of order of the judgement. It is alleged that State of H.P. did not prefer any appeal against the stay order dated 09.12.2010. The judgement of the Hon'ble High Court of H.P. became final. It is also submitted that the question of delay to stands finally adjudicated as CWP No. 46/2019 the Hon'ble High Court of H.P. of the view that order dated 31.10.2018 was illegal and contrary to the record. It is submitted that the same stands withdrawn as per order dated 11.03.2019. The petitioner alleged that during the pendency of matter for adjudication before the Hon'ble High Court H.P. Shimla, the services of the petitioner were terminated by the respondent in the month of June, 2001 illegally and arbitrary. Decision of the respondent according to the petitioner was illegal and unjustified and against the policy of the State. It is alleged that the respondent violated the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 and no compensation was given to the applicant before alleged illegal and wrong retrenchment. It is also alleged that respondent did not follow the policy of 'first come last go' and as such the applicant is entitled for all the service benefits from the date of illegal termination. In the light of these averments, the petitioner has prayed that respondent be directed to re-instate the services of the petitioner with full back wages by holding the termination of the orders as wrong and illegal. It is also prayed that the respondent be directed to confer the status of daily wagger work upon the applicant as per the order of the Hon'ble High Court and respondent be directed to pay all the benefits of the period during which the applicant remained terminated due to illegal order of retrenchment.

3. In reply to the claim petition, preliminary objections *qua* maintainability, claim being devoid of merits, suppression of material fact, abuse of the process of law and description of erroneous facts by the petitioner were raised. It is also asserted that the petition is barred by limitation. On merits, it was admitted that the petitioner was engaged by the Department of Town & Country Planning, Himachal Pradesh *w.e.f.* 15.11.1996 as Chainman. It is asserted that the petitioner was initially engaged on part time basis and he was reengaged on daily wager *w.e.f.* 27.11.1997 and he continued upto 22.07.1998. He was again engaged on 15.11.1998 upto 15.03.1999 on part time basis as sweeper-cum-coal man. He worked up to 26.12.2000. The work done by the petitioner was on different job on part time basis only and daily waged worker could not be engaged without prior approval of the Government. It is admitted that representation of the applicant was rejected by the State Town Planner, Town and Country Planning Department Shimla-9. It is also admitted that the petitioner had filed CWP(T) No. 7329/2008 in the Hon'ble Court and same was challenged in LPA No. 65/2012 which was decided on 4.4.2012. The respondent after dismissal of LPA moved before the Hon'ble High Court of Himachal Pradesh in review petition No. 72/2013 which was also dismissed *vide* order dated 25.04.2013. The respondent department was directed to confer the status of daily wager in view of policy framed by the State of H.P. Government. The applicant, however, had not completed the requisite period for regularization on daily wages as well as part time. It was also mentioned in the order passed by the Deputy Labour Commissioner Himachal Pradesh pertaining to October, 2018 that the alleged dispute is stale, faded away with the passage of time. The said order, however, withdrawn *vide* notification dated March, 2019. It is alleged that the services of the petitioner were terminated in lawful manner and did not amount to violation of mandatory provisions of the Industrial Disputes Act, 1947. It is further alleged that the applicant is not entitled for any benefits as per provisions of policy framed by the Government to regulate the services of the part time workers *vide* notification No. AP-B-F(1)/2009 dated 13.10.2009. The applicant had himself prayed for regularization of services before the Hon'ble High Court instead of reinstatement. Direction issued by the Hon'ble High Court was duly complied by the Department and as per the policy issued by the Department of personnel on part time class-IV employees having completed 10 years of continuous services will be made daily wager subject to the observance of terms and conditions. At the time of termination the petitioner had completed 4 years and 6 months on part time basis. Thus, he was not entitled for the benefits as per the policy of the State Government. He had also not completed 240 days continuously in any calendar year as a Chainman which is the pre-requisite condition precedent as provided in the definition of continuous service under Section 25-B of the Industrial Disputes Act, 1947. It is also asserted that no other person against the applicant has ever been appointed as part time sweeper in the office of the Town & Country Planning Department, Mandi Division in June, 2001. Sh. Laxman Dass has also already working as Watchman-cum-Sweeper with effect from 17.01.1997 to 21.05.2003. After his tenure Sh. Manoj Kumar remained deployed as Watchmen-cum-Sweeper from 5.4.2010 to 04.01.2013. Thus according to respondent no other person was appointed in place of the applicant as part time coalman/sweeper after discontinuing services of Sh. Brij Lal. Other averments made in the petition have been denied on delay and latches. It is prayed that the petition deserves to be dismissed

4. The petitioner by way of rejoinder has denied preliminary objections raised in the reply and reasserted facts and averments made in the petition.

5. On the basis of the pleadings of the parties, the following issues were framed on 03.12.2020 for adjudication and determination:—

1. Whether the termination of the services of the petitioner during June, 2001 by the respondents is /was illegal and unjustified, as alleged? . . . *OPP*.

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
4. Whether the petitioner has not come this Court with clean hands and has suppressed the material facts, as alleged? . . . *OPR.*

#### Relief

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A. He also produced on record copy of letter dated 28/29 July, 2017 Ext. PW1/B, copy of muster roll Ext. PW1/C, copy of letter dated 16.11.1998 Ext. PW1/D, copy of order dated 09.12.2010 Ext. PW1/E passed by the Hon'ble High Court of H.P. in evidence.

7. Respondent has examined Sh. Pradeep Thakur, Town and Country Planner in the Divisional Town and Country Planning Office, Mandi as RW1. In his affidavit he has reiterated the facts mentioned in the reply and also tendered in evidence letter dated 13.07.2000 Ext. R-1, mandays chart Ext. R-2, letter dated 16.11.1998 Ext. R-3, copy of judgement dated 9.12.2010 Ext. R-4, copy of judgement dated 4.4.2012 Ext. R-5, copy of order dated 25.04.2013 Ext. R-6, copy of order October, 2018 Ext. R-7, copy of notification Ext. R-8, copy of letter dated 13.10.2009 Ext. R-9, copy of letter dated 10.04.2017 Ext. R-10, copy of letter dated 25.08.2017 Ext. R-11, copy of letter dated 28.09.2011 Ext. R-12 and copy of letter dated 30.10.2021 Ext. R-13 in evidence.

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

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

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

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

### REASONS FOR FINDINGS

#### *Issue No.1*

10. The respondent has averred in his affidavit that the petitioner was engaged by the Department of Town and Country Planning Himachal Pradesh on part time basis from January, 1997 to March 1997 as a coalman. He was re-engaged as coalman on daily wages *w.e.f.* November, 1997 till March, 1998 and further engaged as chainman on daily wages in the month of April, 1998 till July, 1998. Thereafter, he was engaged again as part time coalman in November, 1998 to March, 1999. He was engaged again as part time sweeper-cum-coalman *w.e.f.* December, 1999 to March, 2000 and finally as part time sweeper April, 2001 to June 2001. The record of the

respondent shows that the petitioner is working in different intervals with the respondents from the years 1997 to June, 2001. The respondent admitted that the petitioner had worked for 4 years and 6 months. Mandays chart of the petitioner has produced on record which clearly shows that the petitioner has worked for specific period of time along-with breaks in service. The contention is raised by the respondent that the petitioner had not completed 240 days of continuous service in the year prior to his disengagement. Carefully perusal of the mandays chart Ext. R-2 clearly shows that as per muster roll/voucher the petitioner had worked for more than 240 days between June, 2000 to June, 2001 when services have been dispensed with by the respondent department. Though, the petitioner had admitted in his cross-examination that he has not completed 240 days in any calendar year. The record of the respondent appears to be quite contrary to the said suggestion made to the petitioner. The present reference has been made not with respect to the right of the petitioner *qua* regularization of his services but for determination as to whether the termination of his services during June, 2001 by the respondent was illegal or not. The petitioner having worked for more than 240 days on part time sweeper, part time sweeper-cum-coalman and part time coalman shows that the petitioner was doing similar nature of work during the course of his service with the respondent. Section 2(s) of the I.D. Act, 1947 describes 'workman' as follow:

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

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or(iv)who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

11. Section 2(oo) of the Industrial Disputes Act, 1947 clearly described the retrenchment as follow:

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

12. Section 25-F of the I.D.Act, 1947 clearly provides as follows:

**"25F. Conditions precedent to retrenchment of workmen.**

- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

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

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”

13. Section 2(s) does not expressly conclude a part time worker from category of workman. In these circumstances of the present case the petitioner had been employed with the department continuously for the period of 240 days in the year preceding his retrenchment was dispensed with the services without following any provisions of Section of 25-F of the I.D. Act *i.e.* either by the issuance of notice or payment in lieu of said notice. It is also clear that notice prescribed under Section 25-F clause (c) was also not served on the appropriate Government. Thus, the termination of service of the petitioner by the respondent in the month of June 2001 was clearly violative of the mandatory provisions of the Act. Hence it can be considered as null and void. Issue No.1 decided in favour of the petitioner.

#### *Issue No.2*

14. It is submitted on behalf of the respondent that status of the petitioner was merely part time employee and he does not fall within definition of workman under the Act.

15. It is evident from the discussion made while deciding issue No.1 that the definition of workman does not distinguish between part time employee or daily wager. It has been established that in the month of June 2001 the services of the petitioner were retrenched without following the mandatory provisions of the Act. In light of these circumstances, the petitioner is entitled for reinstatement of his services with all consequential benefits applicable from the date of his retrenchment. The petitioner is entitled for regularization in accordance with policy of State Government and compensation of Rs. 50,000/- (Rs. Fifty Thousand only) on account of back wages. Issue No. 2 decided in favour of the petitioner.

#### *Issues No. 3 & 4*

16. The maintainability of the claim was challenged precisely on the ground that petitioner had not completed the required number of mandays prior to his termination. Facts to contrary appear from mandays chart Ext. R-2 and RW1 has admitted that petitioner was engaged for full day from 1997 and remained so engaged till 1998. Though he alleges that petitioner left the work. He admits that department had not written any letter to petitioner to join his duties. The fact that petitioner falls within definition of workman and his services were dispensed with in violation of I.D. Act, 1947 establishes that the claim is maintainable. Thus both these issue are decided in favour of the petitioner.

#### *Relief*

17. In view of my findings on the issues no. 1 to 4 above the reference is decided in favour of the petitioner. The respondents are directed to re-instate the services of the petitioner with all consequential benefits applicable from the date of his retrenchment. The petitioner is also entitled for regularization in accordance with policy of State Government and compensation of Rs. 50,000/- (Rs. Fifty Thousand only) in lieu of back wages. Parties are left to bear their costs.

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

Announced in the open Court today, this 20th day of September, 2024.

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

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

Reference No. : 97/2019  
Date of Institution : 29.8.2019  
Date of Decision : 27.9.2024

Shri Bittu Ram s/o Shri Jaissi Ram, r/o Village Mandha, P.O. Tundha, Tehsil Bharmour,  
District Chamba, H.P. . . . *Petitioner.*

*Versus*

The Divisional Forest Officer, Wildlife Division, Chamba, District Chamba, H.P.  
. . . *Respondent.*

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

For the Petitioner : Ms. Malhotra, Bhavna Jyoti, Ld. Adv.  
For Respondent : Sh. Anil Sharma, Ld. DDA

**AWARD**

The following industrial disputes has been referred to this court for the purpose of adjudication by the appropriate authority/Deputy Labour Commissioner.

“Whether termination of services of Shri Bittu Ram s/o Shri Jaissi Ram, r/o Village Mandha, P.O. Tundha, Tehsil Bharmour, District Chamba, H.P. during May, 2018 by the Divisional Forest Officer, Wildlife Division, Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 and retaining juniors (as alleged by workman), is legal and justified? If not, what amount of back wages, seniority, past service benefits, and compensation the above worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner belongs to Tehsil Bharmour, District Chamba which has been declared as scheduled tribe area and hard area. It is alleged that petitioner was initially engaged on muster roll on daily wage basis as a beldar without any appointment letter by the respondent during the year 2003 and continuously worked with intermittent breaks till May, 2018 in Sawi range completed 160 days in a year. In between the services of petitioner were engaged and disengaged and he was given fictional breaks from time to time not letting him to complete 160 days in a calendar year. According to petitioner his services were retained continuously on muster rolls basis and he continued to work with the department for many years. The services of the petitioner were being utilized by the respondent in different forest ranges. The State of Himachal Pradesh framed a policy of regularization for daily wagger which required continuous work of 160 days in tribal area. The respondent however did not disclose the actual number of days before Conciliation Officer and also gave fictional breaks to the petitioner and retrenched him without giving any notice of retrenchment or any compensation in lieu of retrenchment. The breaks which were given to the petitioner are to be counted for the purpose of calculation of 160 days in view of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that the services of petitioner were terminated orally by the respondent department without issuance of one month's notice in writing indicating the reason for retrenchment in non compliance of provisions of Section 25-F of the Act. The petitioner has pleaded that he is very poor person with no source of income. After the oral termination of services of the petitioner he approached respondent department time and again but respondent department did not pay heed to his request. Thereafter he approached Labour Officer Chamba vide demand notice dated 30.5.2018. It is also alleged that after his oral termination the department had engaged number of new workers from time to time however sufficient work was available with the department. The persons junior to the petitioner were retained in service without breaks and their services have also been regularized while services of petitioner were retrenched in violation of the principle of 'last come first go' embodied under Section 25-G of the Act. It is alleged that the workers Manjit Singh, Parkash Chand, Raj Kumar, Chain Lal and Jitu Ram are working with the respondent department since 2003 as beldars and their services have retained continuously till date. The petitioner has alleged that he always made himself available for work since 2003 till date of his termination but respondent did not provide him work without any fault of the petitioner. The fictional breaks which were given to petitioner from time to time were intentional or that he should not complete criteria of 160 days as laid down in respect of tribal areas in a calendar year. The petitioner has prayed that respondent department having violated the provisions of the Act and the fundamental rights of the petitioner are liable to reinstate the petitioner. It is further prayed that the petitioner may be granted the relief of reinstatement along-with seniority including continuity of service and all consequential benefits.

3. In reply to the petition preliminary objections *qua* maintainability, cause of action, suppression of material facts etc. were raised. On merits, it is denied that the petitioner has worked in Wildlife Division Since 2003 under the administrative control of forest range Sawi. It is also denied by the respondent that petitioner was working with the respondent department continuously for many years. It is asserted that he had worked with the respondent department only for seasonal works and that too on bill/quotation basis so question of completing 160 days by the petitioner on daily wage basis did not arise. State of H.P. had framed policy for regularization for daily wagger worker who had completed 160 days in each calendar year. The services of petitioner were never disengaged or terminated however he worked with the department intermittently and left the work at his own sweet will. It is also asserted that labourers who remained continuously for 160 days in each calendar year and completed 8 years of services were regularized by H.P. Government regularization policy issued from time to time. Petitioner however is still working with the respondent on bill basis in the months of October and November, 2018 and from months of April, 2019 to October, 2019 thus question of termination of services of petitioner did not arise at all. Other averments made in petition were denied and it is prayed that the petition deserved to be dismissed.



4. No rejoinder filed by the petitioner.

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

1. Whether termination of services of the petitioner during May, 2018 by the respondent is illegal and unjustified, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? .. *OPP.*
3. Whether the claim petition is not maintainable in the present form? .. *OPR.*
4. Whether the petitioner has no cause of action to file the present case, as alleged? .. *OPR.*
5. Whether the petitioner has not approached the Court with clean hands, as alleged, if so, its effect? .. *OPR.*

Relief

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. The petitioner also produced copy of letter dated 6.5.2018 Ext. PW1/B, copy of letter dated 12.6.2018 Ext. PW1/C, payment bills Ext. PW1/D to Ext. PW1/H and copy of payment bill Ext. PW1/J to Ext. PW1/Z42.

7. Respondent has examined Shri Amit Sharma Divisional Forest Officer, Wildlife Division Chamba as RW1. He produced his affidavit Ext. RW1/A wherein he reiterated the facts stated in the reply. He also tendered in evidence copies of bills Ext. RW1/B to Ext. RW1/C.

8. I have heard the learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

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

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

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

### REASONS FOR FINDINGS

*Issue No.1*

10. The reference has been forwarded to this court in order to adjudicate the legality of the termination of services of the petitioner during May, 2018. The petitioner has deposed in his

affidavit that he was engaged as beldar *w.e.f.* March, 2003 at Beat Banni Mandha Nursery Range Garola Forest Division Bharmour Tehsil and District Chamba, H.P. Thereafter his services were transferred to Wildlife Division Chamba Range Bharmour *w.e.f.* September, 2008 and thereafter he was continuously worked as such without any break in his services. RW1 Shri Amit Sharma has initially denied in his cross-examination that petitioner was engaged as a beldar in Mandho Nursery Banni Beat Forest Division Bharmour but subsequently admitted as correct that services of petitioner were transferred from Forest Department to Wildlife Division Chamba. Petitioner has asserted that he was worked as beldar from the year 2003. RW1 Shri Amit Sharma has denied that the petitioner had worked in the Wildlife Division since 2003. He has asserted that administrative control of Forest Range Sawi was not with DFO Wildlife Chamba during 2003. In his cross-examination the respondent has stated that petitioner has worked *w.e.f.* 2004 to 2007. He asserts that the petitioner was working on bill basis at that time and presently also he is working on bill basis. Petitioner has produced on record copy of order of Hon'ble Administrative Tribunal dated 3<sup>rd</sup> August, 2018 wherein it was directed that the petitioner would continue on the same terms and condition subject to availability of vacancy and funds till further orders and due and admissible wages, if not already paid to the petitioner/applicant shall be paid to him at early date preferably within 30 days from the date of production certified copy of order. RW1 Shri Amit Sharma has admitted in his cross-examination that the petitioner had been working continuously after the order of Hon'ble Administrative Tribunal in the Wildlife Range.

11. Petitioner has asserted in his affidavit that he had worked continuously for more than 8 years with the respondent. It is also the case of the petitioner that his service condition were changed from muster roll basis to bill basis without any notice. Learned Counsel for the petitioner has vehemently argued that this was violation of Section 9A of the Industrial Disputes Act, 1947. Learned Counsel has further submitted that continuous employment of the petitioner on bill basis, muster roll basis and again on bill basis amounted to unfair labour practice on behalf of the respondent. He further alleges that deliberate terminal breaks which have been given to the petitioner were in order to prevent him from completing 180 days continuous service as specified for the tribal area of Bharmour Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act and become entitled for the consequential benefits.

12. It is important to peruse the documentary records which have been produced before this court. The petitioner has produced the copy of bills Ext. PW1/D to Ext. PW1/H as well as payment bills Ext. PW1/J to PW1/Z42. It is the case of the petitioner that he was employed with the respondent since the year 2003. Respondent denied this assertion in their pleadings but has mentioned that the petitioner worked *w.e.f.* 2004 to 2007 on bill basis only. It is pertinent to mention that no record regarding the work done by the petitioner from the year 2004 to the year 2007 have been produced by the respondent. In view of the admission made by RW1 Shri Amit Sharma it is clear that petitioner was working with the respondent from year 2004 to 2009 also. Petitioner has produced on record copy of muster rolls Ext. PW1/G to PW1/K which have been prepared in respect of month of April, May, June, July 2012. During this period the mandays attributed to the petitioner have been clearly depicted and the amount due has already been recorded. Except these mandays the respondent has not produced a clear record of the muster rolls prepared in respect of the petitioner. The seniority list Ext. PW1/Z32, Ext. PW1/Z33 and Ext. PW1/Z35 are not consisting with each that in terms of recording the mandays of petitioner during year 2003 to 2008. No reliance can be placed on these documents. On the other hand it appears from the record of muster rolls as well as record of payment by way of bill basis pertaining to the petitioner that his service condition were being changed from muster rolls basis to bill basis without any request or notice under Section 9A of the Industrial Disputes Act, 1947. It has been held by Hon'ble High Court of H.P. in **Ram Singh vs. State of Himachal Pradesh and others in CWP No.789 of 2024, decided on 4.7.2024** has observed in para nos. 5 and 6 as follows:—

- “5. It is not in dispute that the petitioner is serving with the respondents-Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of “bill basis” but, fact of the matter still remains that be it a daily wager or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.
6. This Court of the considered view that the distinction, which is now being created by the respondents-Department between a daily wage worker and a bill base worker is violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India.

13. The oral as well as documentary evidence which have been produced on the case file clearly shows that the respondent had admittedly that petitioner had worked with the respondent from 2004 and still continuing the work with the respondent. Condition of service of petitioner was being changed in violation of the provisions of the Industrial Disputes Act. It is also clear that the respondent were giving deliberate fictional breaks and consistently changing condition of service of petitioner from muster rolls basis to bill basis in order to avoid to keep a record of number of mandays rendered by the petitioner while in service with the respondent. The above act of the respondent clearly amounts to unfair labour practice and is violative of fundamental rights of the petitioner. Consequently the termination of the petitioner as mentioned in the reference w.e.f. May, 2018 and the terminal breaks given to him since his initial employment in the year 2004 could not be held to legal and justified. Issue No.1 is decided in the favour of petitioner.

#### *Issue No. 2*

14. RW1 Shri Amit Sharma has admitted that petitioner had worked with department from 2004. It is also clear that the petitioner was continuously in employment of respondent since the year 2004 till date though he is shown to have worked on muster roll basis and bill basis simultaneously. While deciding issue no.1 it has been established that the conduct of the respondent in providing fictional breaks to the petitioner and changing condition of service was violative of provisions of the Industrial Disputes Act, 1947, thus the petitioner is held entitled for reinstatement of his service on daily wage basis from the date of his termination *i.e.* May, 2018 and all the consequential benefits of continuous service since the year 2003 without back wages. The petitioner is also held entitled to compensation of Rs.50,000/- on account of unfair labour practices being carried out by the respondent. Issue No.2 is decided accordingly.

#### *Issues No. 3 to 5*

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

16. The onus of proving these issues on the respondent the maintainability of petition specifically challenged on the ground that petitioner was working on bill basis the evidence on case file proves that respondent had deliberately tried to conceal the number of days for which the petitioner had worked with the respondent department. It is however established that the petitioner was continuously working with the respondent since 2004. Nothing emerges from the evidence to establish that the petitioner had suppressed any material facts from this court. Accordingly issues No. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

*Relief*

17. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement of his service on daily wage basis from the date of his termination *i.e.* May, 2018 and all the consequential benefits of continuous service since the year 2003 without back wages. The petitioner is also held entitled to compensation of Rs.50,000/- along with interest @ 6% on account of unfair labour practices being carried out by the respondent from date of illegal termination in May, 2018 till realization. Parties are left to bear their costs.

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

Announced in the open Court today, this 27th day of September, 2024.

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

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

Reference No. : 92/2019  
Date of Institution : 01.8.2019  
Date of Decision : 30.9.2024

Shri Atma Ram s/o Shri Godam Ram, r/o Village Diara, P.O. Tota Rani, Tehsil  
Dharamshala, District Kangra, H.P. . . *Petitioner.*

*Versus*

The Director, M/s Raheja Hydro Power Project, Gaj-II, SHP, Village Diara, Tehsil  
Dharamshala, District Kangra, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Sushil Kumar, Ld. Legal Aid Adv.  
For Respondent : Sh. Rajiv Kumar Sharma, Ld. Adv.

**AWARD**

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

“Whether the termination of services of Shri Atma Ram s/o Shri Godam Ram, r/o Village Diara, P.O. Tota Rani, Tehsil Dharamshala, District Kangra, H.P. by the Director, M/S Raheja Hydro Power Project, Gaj-II SHP, Village Diara, Tehsil Dharamshala, District Kangra, H.P. *w.e.f.* 02-04-2016 after conducting domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workers are entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner was working as a worker in Raheja Hydrel Power Pvt. Ltd. at Diyara, P.O. Totarani, Tehsil Dharamshala, District Kangra, H.P. According to petitioner he was performing his duty under the project since 2009 sincerely and to the satisfaction of his superiors without any complaint. The management had not issued any appointment letter to the petitioner nor any identity card and thus violated labour laws. During the course of construction of project the respondent had even not paid minimum wages to the employees. When workers formed the union then management/respondent retrenched the services of the petitioner by levelling false allegations of conducting biased domestic enquiry. The services of petitioner along-with other employees of the project were terminated on 2.4.2016 on the pretext that they raised their voice against anti workmen steps of management/respondent. The union of workers had submitted its demand charter to the respondent time and again. After the decision of conciliation meeting respondent management denied to pay pending amount of layoff time to the employees despite request and hence cause of action accrued. It is alleged that respondent management did not pay heed to the genuine and legal demands of the union and services of the petitioner and others were terminated by conducting fake domestic enquiry. It is further alleged that the petitioner and other employee had given proper notice to respondent to go on token strike on dated 9.7.2013. The demand notice reminder dated 12.3.2014 and request of employees dated 9.7.2013, demand notice dated 22.10.2014, conciliation proceedings in the office of Labour Inspector Dharamshala on 11.4.2014, reminder dated 22.8.2014, reminder dated 27.8.2014, demand notice dated 24.9.2014 and information letter about proposed strike was dated 20.10.2014. According to petitioner the strike was not illegal one. It is alleged that the respondent management first served petitioner notice under Section 9 Clause 2 of Payment of Wages Act, 1936 for demanding eight days salary as punishment for joining strike on 22.10.2014. Petitioner gave his satisfactory reply to the notice while salary of the petitioner were deducted on the pretext of joining the strike. It is submitted that petitioner being member of the employees union was raising voice for the welfare of the employees and due to demands of the employee the respondent was offended. The demands were being published in daily newspaper and the management was in search of excuse to terminate/retrench the services of the employees who were member of the union. The respondent management served notice upon the petitioner for conducting domestic enquiry for misconduct dated 22.10.2014 for joining the strike with other colleagues and demanding for their rights. It is alleged that Inquiry Officer who had conducted the inquiry was biased and helped the respondent management by keeping aside witnesses of the petitioner and did not record statement of petitioner. It is alleged that Inquiry Officer has conducted domestic enquiry as per desire of the respondent management. Since the fees of enquiry and other emoluments were also being paid by the management. It is alleged that respondent management fabricated and concocted story and falsely implicated the petitioner and K.L. Rana, Satish Kumar, Sunil Kumar, Ajay Kumar, Arjun Singh and Vijay Kumar on the allegations that petitioner has given beating to his superior. The services of petitioner, Satish Kumar, Arjun Singh, Atma Ram, Virender Kumar and Onkar Singh were retrenched while all other workers are still working in the employment of the respondent. It is alleged that the respondent had wrongly and illegally retrenched the services of employees who were members of union. When the respondent had terminated the services of the petitioner complainant Rajat Kumar had compromised the matter with him thus the act of complainant clearly suggested that false complaint was made just to victimize the petitioner in connivance with

the management. According to petitioner the whole episode was between one Shri K.L. Rana (Administration Incharge) and Shri Rajat Kumar and one Shri Nishant. Petitioner was not concerned with the quarrel between the above said persons. The respondent management only indulge the petitioner in the enquiry to take revenge from him. Shri K.L. Rana who was important link in the enquiry was not made party and the Inquiry Officer did not record single statement qua this episode. Thus conduct of Inquiry Officer shows and suggest that the Inquiry Officer was biased against the petitioner and was interested to give favourable report in the favour of the respondent management. It is alleged that during course of domestic enquiry the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. During the course of inquiry no intimation regarding domestic inquiry was sent to labour department and the services of the petitioner were terminated on 22.2.2016. According to petitioner he had rendered the services of 240 days continuously in one calendar year and employees junior to him are still on the roll of the respondent management. It is also alleged that respondent management has violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). In the light of above averment and allegations the petitioner has prayed that respondent be directed to reinstate the services of the petitioner with full back wages by holding the termination/retrenchment as wrong and illegal. The petitioner has also prayed that respondent department be directed to pay all the benefits of period during the petitioner remained terminated due to illegal order of retrenchment.

3. Respondent management by way of reply raised preliminary objections qua maintainability and suppression of material facts and disguise of facts by the petitioner. On merits, it is submitted that the petitioner had indulged in a grave misconduct during course of his employment in the Hydel Project of the respondent management. The respondent management also held an independent enquiry into misconduct of the petitioner by an independent person in accordance with the Industrial Employment (Standing Orders) Himachal Pradesh Rules 1973 and Amended Rules 1991 which are applicable to the respondent company. The enquiry was also in accordance with principle of natural justice. Inquiry Officer had afforded full opportunity to petitioner to produce any person as defence representative who was in employment of the respondent management in order to defend his case. The Inquiry Officer also afforded opportunity to petitioner to attend enquiry proceedings and he attended the enquiry proceedings. Petitioner was given opportunity to cross-examine the witnesses of the respondent and Inquiry Officer also afforded opportunity to the petitioner to produce his witnesses in his defence. Thus according to the respondent inquiry was conducted in lawful manner. It is also submitted that petitioner is gainfully employed earning more than what he earned from the respondent management. On merits, other averments made in the petition have been denied para-wise. It is asserted that petitioner first of all committed grave misconduct on 22nd October, 2014 when despite the reason of the pendency of conciliation proceedings before Conciliation Officer of Labour Department Himachal Pradesh proceeded on strike with having meeting of mind with other co-workers and caused financial losses to the respondent management. Respondent charge-sheeted the petitioner as per law laid down under Model Standing Orders applicable to the project in the State of Himachal Pradesh where reply was filed by the petitioner and found to be non satisfactory. Respondent appointed outsider having no interest in work of the project and Inquiry Officer had conducted the inquiry as per Model Standing Orders. The Inquiry Officer after furnishing the enquiry submitted report. The respondent after considered the report in the light of fact and circumstances of the case, in the meantime petitioner quarrelled with the other workers of the project so the petitioner was again charge-sheeted as per Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 vide which charge-sheet dated 15.6.2015 under Rules 16 of the Model Standing Orders was issued. The petitioner filed the reply to the charge-sheet but the reply was found to be against the fact and non satisfactory. Keeping in view the principle of natural justice the management took the decision to hold an independent inquiry and respondent appointed a outsider Shri Hardesh Sharma, Advocate, r/o Nalagarh, District Solan, Himachal Pradesh as an Inquiry

Officer to enquire into the matter in accordance with principle of natural justice. The Inquiry Officer gave notice of inquiry to the petitioner and petitioner participated in the inquiry proceedings. The Inquiry Officer had afforded full opportunity to the petitioner copy of proceedings and inquiry report was also given to the petitioner on each and every date of hearing. Petitioner not only cross-examined the respondent witnesses but also produced witnesses in his defence thus principle of natural justice were adhered at the time of conduct of enquiry. On the basis of report dated 10.12.2015 the respondent reached to the conclusion that petitioner is not in a position to serve the institution and confidence between employer and employee had been shattered and as such the respondent issued show cause notice dated 30.12.2015 in the shape of proposed penalty letter but the petitioner had not taken seriously and started in levelling false allegations against the responsible officers of the management. Thus the respondent was left with no other choice but to pass dismissal order dated 15.2.2016 effective from 22.2.2016. The amount of full and final payment was transferred on the account of petitioner and the petitioner had withdrawn the amount from the bank which shows that petitioner had accepted full and final financial benefits being sent by the respondent thus there remained no relationship of employer and employee between the parties. The notice under Section 9 Clause 2 of Payment of Wages Act, 1936 was issued by the petitioner as the petitioner has proceeded on illegal strike. Other averments made in the petition were denied and it is prayed that petition may be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties and considering the reference which had been received for the purpose of adjudication the following preliminary issue was framed by learned predecessor on 23.3.2019 as follows:—

1. Whether fair and proper enquiry has not been conducted against the petitioner by the respondent, as alleged? . . . *OPP.*

Relief

6. Petitioner in order to prove his case he has filed Affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He has also produced on record the copy of letter dated 19.12.2014 Ext. PW1/C, copy of settlement dated 22.4.2014 Ext. PW1/D, copy of demand notice dated 20.10.2014 Ext. PW1/E, copy of demand notice dated 22.10.2014 Ext. PW1/F, copy of conciliation proceedings Ext. PW1/G, copy of letter dated 23.10.2014 Ext. PW1/H, copy of FIR Ext. PW1/J, copy of Attendance Ext. PW1/K, copy of demand notice Ext. PW1/L, copy of second show cause notice Ext. PW1/M, copy of reply to show cause notice Ext. PW1/N, copy of enquiry report Ext. PW1/P, copy of letter dated 15.12.2014 Ext. PW1/Q, copy of letter dated 19.12.2014 Ext. PW1/R and copy of cutting of newspaper Mark-A. Petitioner also examined Shri Vinod Kumar as PW2 who has stated in his examination-in-chief that petitioner Atma Ram is from my village and he had been working with respondent project and I don't know anything else. He feigned ignorance that why the petitioner was removed from the work.

8. Respondent has examined Shri Dilbag Singh, Plant Head of respondent management by way of affidavit Ext. RW1/A. He has reiterated the facts stated in the reply and produced copy of reply to demand notice Ext. RW1/B, letter dated 28.11.2014 Ext. RW1/C, copy of letter dated 26.11.2014 Ext. RW1/D, copy of calculation of loss of revenue Ext. RW1/E, copy of notice dated 24.10.2014 Ext. RW1/F and copy of dismissal letter Ext. RW1/G. Respondent has also examined Shri Hardesh Sharma by way of affidavit Ext. RW2/A. He has stated that he was appointed as Inquiry Officer on the basis of charge-sheet issued to the petitioner by the respondent. He conducted inquiry as per Model Standing Orders depicted in Himachal Pradesh (Industrial

Employment Standing Orders) Rules 1973 and Amended Rules 1991 as applicable to the respondent and in accordance of principle of natural justice. He further states that petitioner was apprised that he had authorised to conduct the enquiry. He recorded statements of witnesses for giving full chances to the petitioner to cross-examine the witnesses. He also afforded due opportunity to the petitioner. Copy of the statement of witnesses and inquiry proceedings were signed by the petitioner and authorized person. Copies of statement of witnesses and proceedings also supplied to petitioner on the same day. He also obtained the signature of petitioner and other person and thus enquiry was conducted as per principle of natural justice and in accordance with rule. The inquiry report according to him was based on document supplied during course of inquiry proceedings and oral evidence adduced by the parties. He has also produced inquiry report Ext. PW1/P which has been exhibited in evidence and he identified his signatures on the same in red circle A. His inquiry proceedings including the statement of the witnesses is Ext. RW2/B.

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

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

Issue No.1 : No

Relief : The reference is decided accordingly

### **REASONS FOR FINDINGS**

#### *Issue No.1*

11. The reference qua termination of the services of petitioner Atma Ram had been received by this court it was required to be adjudicated whether the domestic enquiry was conducted without adequate opportunity and whether the termination was in violation of the provisions of Industrial Disputes Act, 1947. It was alleged on behalf of the petitioner that domestic inquiry was conducted without affording adequate and sufficient opportunities in the domestic inquiry and thus termination was in violation of the provisions of the Act. In order to prove the allegations made in the petition, the petitioner has stated in his affidavit that the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. He also alleged that during the course of inquiry no intimation regarding domestic inquiry was even sent to labour department. It is also alleged by the petitioner that the inquiry was conducted only as per the decision of the respondent management since the fees and emoluments were paid by the management. The officer who conducted domestic inquiry was biased. Contrary to this RW1 Shri Hardesh Sharma has clearly stated in his affidavit that he had carried out the inquiry in accordance with Model Standing Orders depicted of Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 and also in accordance with principle of natural justice. PW2 Shri Vinod Kumar has shown ignorance to the facts surrounding termination of petitioner. It has been pleaded on behalf of the petitioner that the Inquiry Officer had conducted biased inquiry and it is specifically mentioned that the whole episode between Kishori Lal Rana and one Rajat Kumar and Nishant the petitioner had nothing to do with quarrel but respondent management had implicated the petitioner in the inquiry to take revenge from the petitioner. It is also mentioned that Shri Kishori Lal Rana was link in the enquiry and he was not made a party and Inquiry Officer did not record single statement qua this episode.

12. With regard to legal procedure and the principle of natural justice corresponding the inquiry proceedings it is also pertinent to peruse the cross-examination of petitioner. The petitioner



admitted that on 22.10.2014 they gave notice Ext. PW1/F to the company. He admits that on 22.10.2014 at about 4 PM they stopped the production of electricity and due to this losses were caused to respondent. He admits that loss so caused was calculated to be Rs. 1,34,874/-. He also admitted that charge-sheet was given to him for stopping the work. He admits that he did not reply of the said charge-sheet. He admits that he was informed about domestic inquiry. He admits that he appeared before Inquiry Officer and he took part in the inquiry proceedings and the same bears his signatures. He admits signature on the copy of proceedings as Ext. R1. He admits that he was given opportunity to cross-examine the witnesses and his defence assistant cross-examined witnesses. He admits that his statement was written by the Inquiry Officer and he received inquiry report Ext. PW1/P. He admits that on 1.3.2016 salary was given to him. He denied that all the proceedings against him was carried out in accordance with law. He also denied that he has been wrongly terminated. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr.** in **Civil Appeal No.1841 of 2010** as follows:—

“49. Having perused the enquiry proceedings along with the Enquiry Report, we are of the view that no fault of any nature can be noticed in the domestic enquiry proceedings for more than one reason.

50. First, the appellant was given full opportunity at every stage of the proceedings which he availed; Second, he never raised any objection complaining causing of any prejudice of any nature to him before the Enquiry Officer; Third, he received all the papers/documents filed and relied upon by respondent No.1 Bank in support of the chargesheet; Fourth, he filed reply, cross examined the employer's witnesses, examined his witnesses in defence, attended the proceedings and lastly, the Enquiry Officer appreciated the evidence and submitted his reasoned report running in several pages holding the appellant guilty of both the charges.

51. In short, in our opinion, no case is made out to hold that the domestic enquiry suffers from any procedural lapse or was conducted in violation of the principle of natural justice thereby causing any prejudice to the rights of the appellant”.

13. In the present case also the oral and documentary evidence produced before this court clearly shows that full opportunity at every stage of proceedings was afforded to the petitioner in a domestic inquiry. The opportunity was availed by the petitioner. The petitioner never raised any objection complaining the prejudice which was being caused to him before the Inquiry Officer. All the documents, statements and evidence including inquiry report were supplied and the proceedings was carried out in the presence of the petitioner. It is alleged that the Inquiry Officer was appointed by the respondent management even though in accordance with the Standing Orders it is prerogative of the management to appoint the Inquiry Officer. The biased nature of the Inquiry Officer biased conduct was not evident from the proceedings of the inquiry. The inquiry appears to have been conducted in accordance with rules and procedure with no evident violation of the principle of natural justice. The allegations to the effect that Inquiry Officer was a biased could not be proved from any independent evidence. Part of the cross-examination of the petitioner itself reveals that there was no violation of principle of natural justice and the inquiry was carried out in accordance with laws and procedure. Thus issue no.1 is decided in the favour of the respondent and against the petitioner.

### *Relief*

14. As a sequel to the above discussion on preliminary issue no.1 and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

15. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr. in Civil Appeal No.1841 of 2010** as follows:—

“52. Once it is held that the domestic enquiry is legal and proper the next question arises for consideration is as to whether the punishment imposed on the appellant is just and legal or it is disproportionate to the gravity of the charges”.

16. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

“[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

17. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

18. Now come up for hearing of both the parties

Be called after respite

30.9.2024 Present: Sh. Gaurav Chaudhary, Ld. Counsel for petitioner

Ms. Sapna Thakur, Ld. Vice Counsel for respondent

19. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.

20. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **titled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised

judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

21. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation to the petitioner within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

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

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

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

Reference No. : 185/2017

Date of Institution : 16.8.2017

Date of Decision : 30.9.2024

Shri Virender Kumar s/o Shri Prithi Chand, r/o Village Barnet, P.O. Totarani, Tehsil  
Dharamshala, District Kangra, H.P. . . . *Petitioner.*

*Versus*

The Director, M/s Raheja Hydro Power Project, Gaj-II, SHP, Village Diara, Tehsil  
Dharamshala, District Kangra, H.P. . . . *Respondent.*

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

For the Petitioner : Sh. Jitender Rana, Ld. Legal Aid Adv.

For Respondent : Sh. Rajiv Kumar Sharma, Ld. Adv.

**AWARD**

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

“Whether the termination of the services of Shri Virender Kumar s/o Shri Prithi Chand, r/o Village Barnet, P.O. Totarani, Tehsil Dharamshala, District Kangra, H.P. by the Director, M/s Raheja Hydro Power Project, Gaj-II SHP, Village Diara, Tehsil Dharamshala, District Kangra, H.P. *w.e.f.* 22.02.2016 vide order dated 15.02.2016 (copy enclosed) on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that the petitioner was working as a worker in Raheja Hydel Power Pvt. Ltd. at Diyara, P.O. Totarani, Tehsil Dharamshala, District Kangra, H.P. According to petitioner he was performing his duty under the project since 2009 sincerely and to the satisfaction of his superiors without any complaint. The management had not issued any appointment letter to the petitioner nor any identity card and thus violated labour laws. During the course of construction of project the respondent had even not paid minimum wages to the employees. When workers formed the union then management/respondent retrenched the services of the petitioner by levelling false allegations of conducting biased domestic enquiry. The services of petitioner along-with other employees of the project were terminated on 22.2.2016 on the pretext that they raised their voice against anti workmen steps of management/respondent. The union of workers had submitted its demand charter to the respondent time and again. After the decision of conciliation meeting respondent management denied to pay pending amount of layoff time to the employees despite request and hence cause of action accrued. It is alleged that respondent management did not pay heed to the genuine and legal demands of the union and services of the petitioner and others were terminated by conducting fake domestic enquiry. It is further alleged that the petitioner and other employee had given proper notice to respondent to go on token strike on dated 22.10.2014. The demand notice reminder dated 9.7.2013 and request of employees dated 9.7.2013, demand notice dated 12.3.2014, conciliation proceedings in the office of Labour Inspector Dharamshala on 11.4.2014, reminder dated 22.8.2014, reminder dated 27.8.2014, demand notice dated 24.9.2014 and information letter about proposed strike was dated 20.10.2014. According to petitioner the strike was not illegal one. It is alleged that the respondent management first served petitioner notice under Section 9 Clause 2 of Payment of Wages Act, 1936 for demanding eight days salary as punishment for joining strike on 22.10.2014. Petitioner gave his satisfactory reply to the notice while salary of the petitioner were deducted on the pretext of joining the strike. It is submitted that petitioner being member of the employees union was raising voice for the welfare of the employees and due to demands of the employee the respondent was offended. The demands were being published in daily newspaper and the management was in search of excuse to terminate/retrench the services of the employees who were member of the union. The respondent management served notice upon the petitioner for conducting domestic enquiry for misconduct dated 22.10.2014 for joining the strike with other colleagues and demanding for their rights. It is alleged that Inquiry Officer who had conducted the inquiry was biased and helped the

respondent management by keeping aside witnesses of the petitioner and did not record statement of petitioner. It is alleged that Inquiry Officer has conducted domestic enquiry as per desire of the respondent management. Since the fees of enquiry and other emoluments were also being paid by the management. It is alleged that respondent management fabricated and concocted story and falsely implicated the petitioner and K.L. Rana, Satish Kumar, Sunil Kumar, Ajay Kumar, Arjun Singh and Vijay Kumar on the allegations that petitioner has given beating to his superior. The services of petitioner, Satish Kumar, Arjun Singh, Atma Ram and Onkar Singh were retrenched while all other workers are still working in the employment of the respondent. It is alleged that the respondent had wrongly and illegally retrenched the services of employees who were members of union. When the respondent had terminated the services of the petitioner complainant Rajat Kumar had compromised the matter with him thus the act of complainant clearly suggested that false complaint was made just to victimize the petitioner in connivance with the management. According to petitioner the whole episode was between one Shri K.L. Rana (Administration Incharge) and Shri Rajat Kumar and one Shri Satish Nishant. Petitioner was not concerned with the quarrel between the above said persons. The respondent management only indulged the petitioner in the enquiry to take revenge from him. Shri K.L. Rana who was important link in the enquiry was not made party and the Inquiry Officer did not record single statement qua this episode. Thus conduct of Inquiry Officer shows and suggest that the Inquiry Officer was biased against the petitioner and was interested to give favourable report in the favour of the respondent management. It is alleged that during course of domestic enquiry the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. During the course of inquiry no intimation regarding domestic inquiry was sent to labour department and the services of the petitioner were terminated on 22.2.2016. Subsequently a demand notice was preferred before the Labour Inspector, Kangra at Dharamshala on 19.6.2016 vide which the matter has been referred for the purpose of adjudication. According to petitioner he had rendered the services of 240 days continuously in one calendar year and employees junior to him are still on the roll of the respondent management. It is also alleged that respondent management has violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). In the light of above averment and allegations the petitioner has prayed that respondent be directed to reinstate the services of the petitioner with full back wages by holding the termination/retrenchment as wrong and illegal. The petitioner has also prayed that respondent department be directed to pay all the benefits of period during the petitioner remained terminated due to illegal order of retrenchment.

3. Respondent management by way of reply raised preliminary objections qua maintainability and suppression of material facts and disguise of facts by the petitioner. On merits, it is submitted that the petitioner had indulged in a grave misconduct during course of his employment in the Hydel Project of the respondent management. The respondent management also held an independent enquiry into misconduct of the petitioner by an independent person in accordance with the Industrial Employment (Standing Orders) Himachal Pradesh Rules 1973 and Amended Rules 1991 which are applicable to the respondent company. The enquiry was also in accordance with principle of natural justice. Inquiry Officer had afforded full opportunity to petitioner to produce any person as defence representative who was in employment of the respondent management in order to defend his case. The Inquiry Officer also afforded opportunity to petitioner to attend enquiry proceedings and he attended the enquiry proceedings. Petitioner was given opportunity to cross-examine the witnesses of the respondent and Inquiry Officer also afforded opportunity to the petitioner to produce his witnesses in his defence. Thus according to the respondent inquiry was conducted in lawful manner. It is also submitted that petitioner is gainfully employed earning more than what he earned from the respondent management. On merits, other averments made in the petition have been denied para-wise. It is asserted that petitioner first of all committed grave misconduct on 22nd October, 2014 when despite the reason of the pendency of conciliation proceedings before Conciliation Officer of Labour Department Himachal Pradesh

proceeded on strike with having meeting of mind with other co-workers and caused financial losses to the respondent management. Respondent charge-sheeted the petitioner as per law laid down under Model Standing Orders applicable to the project in the State of Himachal Pradesh where reply was filed by the petitioner and found to be non satisfactory. Respondent appointed outsider having no interest in work of the project and Inquiry Officer had conducted the inquiry as per Model Standing Orders. The Inquiry Officer after furnishing the enquiry submitted report. The respondent after considered the report in the light of fact and circumstances of the case, in the meantime petitioner quarrelled with the other workers of the project so the petitioner was again charge-sheeted as per Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 vide which charge-sheet dated 15.6.2015 under Rules 16 of the Model Standing Orders was issued. The petitioner filed the reply to the charge-sheet but the reply was found to be against the fact and non satisfactory. Keeping in view the principle of natural justice the management took the decision to hold an independent inquiry and respondent appointed a outsider Shri Hardesh Sharma, Advocate, r/o Nalagarh, District Solan, Himachal Pradesh as an Inquiry Officer to enquire into the matter in accordance with principle of natural justice. The Inquiry Officer gave notice of inquiry to the petitioner and petitioner participated in the inquiry proceedings. The Inquiry Officer had afforded full opportunity to the petitioner copy of proceedings and inquiry report was also given to the petitioner on each and every date of hearing. Petitioner not only cross-examined the respondent witnesses but also produced witnesses in his defence thus principle of natural justice were adhered at the time of conduct of enquiry. On the basis of report dated 10.7.2015 the respondent reached to the conclusion that petitioner is not in a position to serve the institution and confidence between employer and employee had been shattered and as such the respondent issued show cause notice dated 30.12.2015 in the shape of proposed penalty letter but the petitioner had not taken seriously and started in levelling false allegations against the responsible officers of the management. Thus the respondent was left with no other choice but to pass dismissal order dated 15.2.2016 effective from 22.2.2016. The amount of full and final payment was transferred on the account of petitioner and the petitioner had withdrawn the amount from the bank which shows that petitioner had accepted full and final financial benefits being sent by the respondent thus there remained no relationship of employer and employee between the parties. The notice under Section 9 Clause 2 of Payment of Wages Act, 1936 was issued by the petitioner as the petitioner has proceeded on illegal strike. Other averments made in the petition were denied and it is prayed that petition may be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties and considering the reference which had been received for the purpose of adjudication the following preliminary issue was framed by learned predecessor on 23.3.2019 as follows:—

1. Whether fair and proper enquiry has not been conducted against the petitioner by the respondent, as alleged? . . . *OPP*.

Relief

6. Petitioner in order to prove his case he has filed Affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He has also produced on record the copy of demand notice dated 9.7.2013 Ext. PW1/B, copy of demand notice dated 12.3.2014 Ext. PW1/C, copy of conciliation dated 11.4.2014 Ext. PW1/D, copy of demand notice dated 13.8.2014 Ext. PW1/E, copy of demand notice dated 22.8.2014 Ext. PW1/F, copy of demand notice dated 27.8.2014 Ext. PW1/G, copy of demand notice dated 24.9.2014 Ext. PW1/H, copy of demand notice dated 20.10.2014 Ext. PW1/I, copy of Bank Statement of Petitioner Ext. PW1/J, copy of dismissal letter

dated 22.2.2016 Ext. PW1/K, copy of newspaper cutting Ext. PW1/L and copy of demand notice dated 19.6.2016 Ext. PW1/M. Petitioner also examined PW2 Shri Kishori Lal Rana by way of affidavit Ext. PW2/A. This witness has stated that he had worked with the respondent from the year 2007 to 2016. The workers of the Hydel Project were making demands with the management since the year 2011 like appointment letter, identity card, bonus and other facilities. An application in this regard was also given to Managing Director, Raheja Hydel Power Project Pvt. Ltd., B-27 A Sushant Lok-1, Gurgaon, Haryana. The copy of same was issued to Labour Commissioner, Shimla. He further stated that he went to project site where Nishant Joshi and Rajat Kumar quarrelled with him and filed false complaint against him and other employees at Police Station Mcleodganj. Subsequently Satish Kumar, Sunil Kumar, Ajay Kumar, Arjun Singh, Virender Kumar and Vijay Kumar had compromised the matter despite which Raheja Hydel Power Project has started an inquiry and called the workers at Hotel Manu Vinod Satobari. This place was at considerable distance from the project site. However when the workers went there they were not given an opportunity of being heard and project management get conducted an enquiry from Inquiry Officer Shri Hardesh Sharma in biased manner. The report was prepared on the basis of false allegations and the workers were dismissed from their services. Virender Kumar, Satish Kumar, Arjun Singh, Atma Ram and Omkar were terminated while other workers were kept in the project. The workers had time and again made the management aware about their demands and also gave advance notice to the management for proceeding on strike however the management had ignored the demands of the workers and thrown them out from the project.

8. Respondent has examined Shri Hardesh Sharma by way of affidavit Ext. RW1/A. He has stated that he was appointed as Inquiry Officer on the basis of charge-sheet issued to the petitioner by the respondent. He conducted inquiry as per Model Standing Orders depicted in Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 as applicable to the respondent and in accordance of principle of natural justice. He further states that petitioner was apprised that he was authorised to conduct the enquiry. He recorded statements of witnesses by giving full chances to the petitioner to cross-examine the witnesses. He also afforded due opportunity to the petitioner. Copy of the statement of witnesses and inquiry proceedings were signed by the petitioner and his authorized person. Copies of statement of witnesses and proceedings were also supplied to petitioner on the same day. He also obtained the signature of petitioner and other person and thus enquiry was conducted as per principle of natural justice and in accordance with rule. The inquiry report according to him was based on document supplied during course of inquiry proceedings and oral evidence adduced by the parties. Respondent has also examined Shri Dilbag Singh, Plant Head of respondent management by way of affidavit Ext. RW2/A. He has reiterated the facts stated in the reply and copy of proceedings Ext. RW2/B, copy of charge sheet Ext. RW2/C and copy of inquiry report dated 24.9.2015 Ext. RW1/D.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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

Issue No.1 : No

Relief. : The reference is decided Accordingly

### REASONS FOR FINDINGS

*Issue No.1*

11. The reference qua termination of the services of petitioner Virender Kumar had been received by this court it was required to be adjudicated whether the domestic enquiry was

conducted without by adequate opportunity and whether the termination was in violation of the provisions of Industrial Disputes Act, 1947. It was alleged on behalf of the petitioner that domestic inquiry was conducted without affording adequate and sufficient opportunities in the domestic inquiry and thus termination was in violation of the provisions of the Act. In order to prove the allegations made in the petition, the petitioner has stated in his affidavit that the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. He also alleged that during the course of inquiry no intimation regarding domestic inquiry was even sent to labour department. It is also alleged by the petitioner that the inquiry was conducted only as per the decision of the respondent management since the fees and emoluments were paid by the management. The officer who conducted domestic inquiry was biased. Contrary to this RW1 Shri Hardesh Sharma has clearly stated in his affidavit that he had carried out the inquiry in accordance with Model Standing Orders depicted of Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 and also in accordance with principle of natural justice. PW2 Shri Kishori Lal Rana has also alleged that the inquiry was not carried out in accordance with the principle of natural justice. He has further submitted that a biased report have been prepared against the workers and they were not given opportunity of being heard. He has also stated that no person from the side of the workers were examined by the Inquiry Officer and the proceedings conducted by Inquiry Officer Shri Hardesh Sharma were partisans the inquiry report was prepared on the basis of false allegations. It has been pleaded on behalf of the petitioner that the Inquiry Officer had conducted biased inquiry and it is specifically mentioned that the whole episode between Kishori Lal Rana and one Rajat Kumar and Nishant the petitioner had nothing to do with quarrel but respondent management had implicated the petitioner in the inquiry to take revenge from the petitioner. It is also mentioned that Shri Kishori Lal Rana was link in the enquiry and he was not made a party and Inquiry Officer did not record single statement qua this episode. In the light of these averments made in the petition it is important to peruse the cross-examination of PW2 Shri Kishori Lal Rana who has denied in his cross-examination that on 30.5.2015 there was quarrel in the plant because of him. He admitted in his cross-examination that he cannot say whether the inquiry have been conducted properly or not since he was present for only one day during the inquiry when his statement was recorded and he did not have knowledge regarding the rest of the proceedings. He also admitted that petitioner was given charge-sheet based on which the proceedings were conducted against him. He also admitted that he was working as Administrator in Power Generation Plant till 31.3.2016 and after his retirement there is dispute with the respondent regarding his PF and gratuity. He also admitted that the petitioner Virender Kumar belongs to his adjoining village.

12. With regard to legal procedure and the principle of natural justice corresponding the inquiry proceedings it is also pertinent to peruse the cross-examination of petitioner. The petitioner admitted that on 22.10.2014 he had worked in general shift of respondent company. He also admitted that on 22.10.2014 and 23.10.2014 the charge-sheet was given to him for stopping the work. He also admits that similar charge-sheet was given to one Arjun and he had replied to the said charges. He admitted that respondent was not satisfied with the reply and they started inquiry proceedings. He admits that he took part in the inquiry proceedings and his statement was recorded by the Inquiry Officer. He admits that the proceedings and statements recorded during the inquiry a copy of the same was supplied to him. He admits that he was supplied the copy of inquiry report. He denied that on 30.5.2015 he and other workers had beaten one Rajat Kumar and Nishant however he admits that on 30.5.2015 a charge-sheet was given to them regarding this quarrel. He admits that he gave reply to the charge-sheet and since the respondent management was not satisfied with the reply, inquiry proceedings were started at hotel Manu Vinod, Satobari near Dal Lake Naddi, Dharamshala. He admits that he took part in these inquiry proceedings and appeared before the Inquiry Officer who disclosed to him in detail about the charges and the proceedings. He admits that copies of proceedings were given to him which also bears his signature. The copy of proceedings as Ext. R1. He admits that his Authorized Representative Shri Satish Kumar had cross-



examined the witnesses and the statement also bears his signature. Copy of statement is Ext. R2. He admits that his statement Ext. R3 was written by the Inquiry Officer and his written statement Ext. R4. He admitted that letter Ext. R5 was also given by him to the Inquiry Officer. He admits that Inquiry Officer had also given their second show cause dated 30.11.2015 Ext. R6, inquiry report Ext. R7 and he had replied to this letter. He admits that dismissal letter Ext. R8 was replied by him. He admits that after suspension allowances/subsistence allowances was given to him and all of his amounts have been settled by the respondent. He also admits that his gratuity was paid. He admits that all the proceedings against him was carried out in accordance with law. He also denied that he has been wrongly terminated. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr. in Civil Appeal No.1841 of 2010** as follows:—

- “49. Having perused the enquiry proceedings along with the Enquiry Report, we are of the view that no fault of any nature can be noticed in the domestic enquiry proceedings for more than one reason.
50. First, the appellant was given full opportunity at every stage of the proceedings which he availed; Second, he never raised any objection complaining causing of any prejudice of any nature to him before the Enquiry Officer; Third, he received all the papers/documents filed and relied upon by respondent No.1 Bank in support of the chargesheet; Fourth, he filed reply, cross examined the employer's witnesses, examined his witnesses in defense, attended the proceedings and lastly, the Enquiry Officer appreciated the evidence and submitted his reasoned report running in several pages holding the appellant guilty of both the charges.
51. In short, in our opinion, no case is made out to hold that the domestic enquiry suffers from any procedural lapse or was conducted in violation of the principle of natural justice thereby causing any prejudice to the rights of the appellant”.

13. In the present case also the oral and documentary evidence produced before this court clearly shows that full opportunity at every stage of proceedings was afforded to the petitioner in a domestic inquiry. The opportunity was availed by the petitioner. The petitioner never raised any objection complaining the prejudice which was being caused to him before the Inquiry Officer. All the documents, statements and evidence including inquiry report were supplied and the proceedings was carried out in the presence of the petitioner. It is alleged that the Inquiry Officer was appointed by the respondent management even though in accordance with the Standing Orders it is prerogative of the management to appoint the Inquiry Officer. The biased nature of the Inquiry Officer biased conduct was not evident from the proceedings of the inquiry. The inquiry appears to have been conducted in accordance with rules and procedure with no evident violation of the principle of natural justice. The allegations to the effect that Inquiry Officer was a biased could not be proved from any independent evidence. Contrary to the averments made in the petition that Shri Kishori Lal Rana was the important part of the inquiry it appears that statement PW2 Kishori Lal Rana was also recorded during course of inquiry. PW2 Kishori Lal Rana has also admitted in his cross-examination that except his statement recorded during the proceedings and he is not aware of the remaining proceedings being conducted by Inquiry Officer. Part of the cross-examination of the petitioner itself reveals that there was no violation of principle of natural justice and the inquiry was carried out in accordance with laws and procedure. Thus issue no.1 is decided in the favour of the respondent and against the petitioner.

### *Relief*

14. As a sequel to the above discussion on preliminary issue no.1 and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

15. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr. in Civil Appeal No.1841 of 2010** as follows:—

“52. Once it is held that the domestic enquiry is legal and proper the next question arises for consideration is as to whether the punishment imposed on the appellant is just and legal or it is disproportionate to the gravity of the charges”.

16. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

“[11A. **Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.**—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

17. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

18. Now come up for hearing of both the parties.

Be called after respite.

30.9.2024 Present: Sh. Gaurav Chaudhary, Ld. Counsel for petitioner

Sh. Sapna Thakur, Ld. Vice Counsel for respondent

19. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.

20. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **titled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under

section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

21. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation to the petitioner within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

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

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

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

Reference No. : 185/2017

Date of Institution : 16.8.2017

Date of Decision : 30.9.2024

Shri Virender Kumar s/o Shri Prithi Chand, r/o Village Barnet, P.O. Totarani, Tehsil  
Dharamshala, District Kangra, H.P. . . *Petitioner.*

*Versus*

The Director, M/s Raheja Hydro Power Project, Gaj-II, SHP, Village Diara, Tehsil  
Dharamshala, District Kangra, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Jitender Rana, Ld. Legal Aid Adv.

For Respondent : Sh. Rajiv Kumar Sharma, Ld. Adv.

**AWARD**

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

“Whether the termination of the services of Shri Virender Kumar s/o Shri Prithi Chand, r/o Village Barnet, P.O. Totarani, Tehsil Dharamshala, District Kangra, H.P. by the Director, M/s Raheja Hydro Power Project, Gaj-II SHP, Village Diara, Tehsil Dharamshala, District Kangra, H.P. *w.e.f.* 22.02.2016 vide order dated 15.02.2016 (copy enclosed) on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that the petitioner was working as a worker in Raheja Hydrel Power Pvt. Ltd. at Diara, P.O. Totarani, Tehsil Dharamshala, District Kangra, H.P. According to petitioner he was performing his duty under the project since 2009 sincerely and to the satisfaction of his superiors without any complaint. The management had not issued any appointment letter to the petitioner nor any identity card and thus violated labour laws. During the course of construction of project the respondent had even not paid minimum wages to the employees. When workers formed the union then management/respondent retrenched the services of the petitioner by levelling false allegations of conducting biased domestic enquiry. The services of petitioner along-with other employees of the project were terminated on 22.2.2016 on the pretext that they raised their voice against anti workmen steps of management/respondent. The union of workers had submitted its demand charter to the respondent time and again. After the decision of conciliation meeting respondent management denied to pay pending amount of layoff time to the employees despite request and hence cause of action accrued. It is alleged that respondent management did not pay heed to the genuine and legal demands of the union and services of the petitioner and others were terminated by conducting fake domestic enquiry. It is further alleged that the petitioner and other employee had given proper notice to respondent to go on token strike on dated 22.10.2014. The demand notice reminder dated 9.7.2013 and request of employees dated 9.7.2013, demand notice dated 12.3.2014, conciliation proceedings in the office of Labour Inspector Dharamshala on 11.4.2014, reminder dated 22.8.2014, reminder dated 27.8.2014, demand notice dated 24.9.2014 and information letter about proposed strike was dated 20.10.2014. According to petitioner the strike was not illegal one. It is alleged that the respondent management first served petitioner notice under Section 9 Clause 2 of Payment of Wages Act, 1936 for demanding eight days salary as punishment for joining strike on 22.10.2014. Petitioner gave his satisfactory reply to the notice while salary of the petitioner were deducted on the pretext of joining the strike. It is submitted that petitioner being member of the employees union was raising voice for the welfare of the employees and due to demands of the employee the respondent was offended. The demands were being published in daily newspaper and the management was in search of excuse to terminate/retrench the services of the employees who were member of the union. The respondent management served notice upon the petitioner for conducting domestic enquiry for misconduct dated 22.10.2014 for joining the strike with other colleagues and demanding for their rights. It is alleged that Inquiry Officer who had conducted the inquiry was biased and helped the respondent management by keeping aside witnesses of the petitioner and did not record statement

of petitioner. It is alleged that Inquiry Officer has conducted domestic enquiry as per desire of the respondent management. Since the fees of enquiry and other emoluments were also being paid by the management. It is alleged that respondent management fabricated and concocted story and falsely implicated the petitioner and K.L. Rana, Satish Kumar, Sunil Kumar, Ajay Kumar, Arjun Singh and Vijay Kumar on the allegations that petitioner has given beating to his superior. The services of petitioner, Satish Kumar, Arjun Singh, Atma Ram and Onkar Singh were retrenched while all other workers are still working in the employment of the respondent. It is alleged that the respondent had wrongly and illegally retrenched the services of employees who were members of union. When the respondent had terminated the services of the petitioner complainant Rajat Kumar had compromised the matter with him thus the act of complainant clearly suggested that false complaint was made just to victimize the petitioner in connivance with the management. According to petitioner the whole episode was between one Shri K.L. Rana (Administration Incharge) and Shri Rajat Kumar and one Shri Satish Nishant. Petitioner was not concerned with the quarrel between the above said persons. The respondent management only indulged the petitioner in the enquiry to take revenge from him. Shri K.L. Rana who was important link in the enquiry was not made party and the Inquiry Officer did not record single statement qua this episode. Thus conduct of Inquiry Officer shows and suggest that the Inquiry Officer was biased against the petitioner and was interested to give favourable report in the favour of the respondent management. It is alleged that during course of domestic enquiry the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. During the course of inquiry no intimation regarding domestic inquiry was sent to labour department and the services of the petitioner were terminated on 22.2.2016. Subsequently a demand notice was preferred before the Labour Inspector, Kangra at Dharamshala on 19.6.2016 vide which the matter has been referred for the purpose of adjudication. According to petitioner he had rendered the services of 240 days continuously in one calendar year and employees junior to him are still on the roll of the respondent management. It is also alleged that respondent management has violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). In the light of above averment and allegations the petitioner has prayed that respondent be directed to reinstate the services of the petitioner with full back wages by holding the termination/retrenchment as wrong and illegal. The petitioner has also prayed that respondent department be directed to pay all the benefits of period during the petitioner remained terminated due to illegal order of retrenchment.

3. Respondent management by way of reply raised preliminary objections qua maintainability and suppression of material facts and disguise of facts by the petitioner. On merits, it is submitted that the petitioner had indulged in a grave misconduct during course of his employment in the Hydel Project of the respondent management. The respondent management also held an independent enquiry into misconduct of the petitioner by an independent person in accordance with the Industrial Employment (Standing Orders) Himachal Pradesh Rules 1973 and Amended Rules 1991 which are applicable to the respondent company. The enquiry was also in accordance with principle of natural justice. Inquiry Officer had afforded full opportunity to petitioner to produce any person as defence representative who was in employment of the respondent management in order to defend his case. The Inquiry Officer also afforded opportunity to petitioner to attend enquiry proceedings and he attended the enquiry proceedings. Petitioner was given opportunity to cross-examine the witnesses of the respondent and Inquiry Officer also afforded opportunity to the petitioner to produce his witnesses in his defence. Thus according to the respondent inquiry was conducted in lawful manner. It is also submitted that petitioner is gainfully employed earning more than what he earned from the respondent management. On merits, other averments made in the petition have been denied para-wise. It is asserted that petitioner first of all committed grave misconduct on 22nd October, 2014 when despite the reason of the pendency of conciliation proceedings before Conciliation Officer of Labour Department Himachal Pradesh proceeded on strike with having meeting of mind with other co-workers and caused financial losses

to the respondent management. Respondent charge-sheeted the petitioner as per law laid down under Model Standing Orders applicable to the project in the State of Himachal Pradesh where reply was filed by the petitioner and found to be non satisfactory. Respondent appointed outsider having no interest in work of the project and Inquiry Officer had conducted the inquiry as per Model Standing Orders. The Inquiry Officer after furnishing the enquiry submitted report. The respondent after considered the report in the light of fact and circumstances of the case, in the meantime petitioner quarrelled with the other workers of the project so the petitioner was again charge-sheeted as per Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 vide which charge-sheet dated 15.6.2015 under Rules 16 of the Model Standing Orders was issued. The petitioner filed the reply to the charge-sheet but the reply was found to be against the fact and non satisfactory. Keeping in view the principle of natural justice the management took the decision to hold an independent inquiry and respondent appointed a outsider Shri Hardesh Sharma, Advocate, r/o Nalagarh, District Solan, Himachal Pradesh as an Inquiry Officer to enquire into the matter in accordance with principle of natural justice. The Inquiry Officer gave notice of inquiry to the petitioner and petitioner participated in the inquiry proceedings. The Inquiry Officer had afforded full opportunity to the petitioner copy of proceedings and inquiry report was also given to the petitioner on each and every date of hearing. Petitioner not only cross-examined the respondent witnesses but also produced witnesses in his defence thus principle of natural justice were adhered at the time of conduct of enquiry. On the basis of report dated 10.7.2015 the respondent reached to the conclusion that petitioner is not in a position to serve the institution and confidence between employer and employee had been shattered and as such the respondent issued show cause notice dated 30.12.2015 in the shape of proposed penalty letter but the petitioner had not taken seriously and started in levelling false allegations against the responsible officers of the management. Thus the respondent was left with no other choice but to pass dismissal order dated 15.2.2016 effective from 22.2.2016. The amount of full and final payment was transferred on the account of petitioner and the petitioner had withdrawn the amount from the bank which shows that petitioner had accepted full and final financial benefits being sent by the respondent thus there remained no relationship of employer and employee between the parties. The notice under Section 9 Clause 2 of Payment of Wages Act, 1936 was issued by the petitioner as the petitioner has proceeded on illegal strike. Other averments made in the petition were denied and it is prayed that petition may be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties and considering the reference which had been received for the purpose of adjudication the following preliminary issue was framed by learned predecessor on 23.3.2019 as follows:—

1. Whether fair and proper enquiry has not been conducted against the petitioner by the respondent, as alleged? . . . *OPP.*

Relief

6. Petitioner in order to prove his case he has filed Affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He has also produced on record the copy of demand notice dated 9.7.2013 Ext. PW1/B, copy of demand notice dated 12.3.2014 Ext. PW1/C, copy of conciliation dated 11.4.2014 Ext. PW1/D, copy of demand notice dated 13.8.2014 Ext. PW1/E, copy of demand notice dated 22.8.2014 Ext. PW1/F, copy of demand notice dated 27.8.2014 Ext. PW1/G, copy of demand notice dated 24.9.2014 Ext. PW1/H, copy of demand notice dated 20.10.2014 Ext. PW1/I, copy of Bank Statement of Petitioner Ext. PW1/J, copy of dismissal letter dated 22.2.2016 Ext. PW1/K, copy of newspaper cutting Ext. PW1/L and copy of demand notice

dated 19.6.2016 Ext. PW1/M. Petitioner also examined PW2 Shri Kishori Lal Rana by way of affidavit Ext. PW2/A. This witness has stated that he had worked with the respondent from the year 2007 to 2016. The workers of the Hydel Project were making demands with the management since the year 2011 like appointment letter, identity card, bonus and other facilities. An application in this regard was also given to Managing Director, Raheja Hydel Power Project Pvt. Ltd., B-27 A Sushant Lok-1, Gurgaon, Haryana. The copy of same was issued to Labour Commissioner, Shimla. He further stated that he went to project site where Nishant Joshi and Rajat Kumar quarrelled with him and filed false complaint against him and other employees at Police Station Mcleodganj. Subsequently Satish Kumar, Sunil Kumar, Ajay Kumar, Arjun Singh, Virender Kumar and Vijay Kumar had compromised the matter despite which Raheja Hydel Power Project has started an inquiry and called the workers at Hotel Manu Vinod Satobari. This place was at considerable distance from the project site. However when the workers went there they were not given an opportunity of being heard and project management get conducted an enquiry from Inquiry Officer Shri Hardesh Sharma in biased manner. The report was prepared on the basis of false allegations and the workers were dismissed from their services. Virender Kumar, Satish Kumar, Arjun Singh, Atma Ram and Omkar were terminated while other workers were kept in the project. The workers had time and again made the management aware about their demands and also gave advance notice to the management for proceeding on strike however the management had ignored the demands of the workers and thrown them out from the project.

8. Respondent has examined Shri Hardesh Sharma by way of affidavit Ext. RW1/A. He has stated that he was appointed as Inquiry Officer on the basis of charge-sheet issued to the petitioner by the respondent. He conducted inquiry as per Model Standing Orders depicted in Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 as applicable to the respondent and in accordance of principle of natural justice. He further states that petitioner was apprised that he was authorised to conduct the enquiry. He recorded statements of witnesses by giving full chances to the petitioner to cross-examine the witnesses. He also afforded due opportunity to the petitioner. Copy of the statement of witnesses and inquiry proceedings were signed by the petitioner and his authorized person. Copies of statement of witnesses and proceedings were also supplied to petitioner on the same day. He also obtained the signature of petitioner and other person and thus enquiry was conducted as per principle of natural justice and in accordance with rule. The inquiry report according to him was based on document supplied during course of inquiry proceedings and oral evidence adduced by the parties. Respondent has also examined Shri Dilbag Singh, Plant Head of respondent management by way of affidavit Ext. RW2/A. He has reiterated the facts stated in the reply and copy of proceedings Ext. RW2/B, copy of charge sheet Ext. RW2/C and copy of inquiry report dated 24.9.2015 Ext. RW1/D.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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

Issue No.1 : No

Relief. : The reference is decided Accordingly

### REASONS FOR FINDINGS

*Issue No.1*

11. The reference qua termination of the services of petitioner Virender Kumar had been received by this court it was required to be adjudicated whether the domestic enquiry was

conducted without by adequate opportunity and whether the termination was in violation of the provisions of Industrial Disputes Act, 1947. It was alleged on behalf of the petitioner that domestic inquiry was conducted without affording adequate and sufficient opportunities in the domestic inquiry and thus termination was in violation of the provisions of the Act. In order to prove the allegations made in the petition, the petitioner has stated in his affidavit that the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. He also alleged that during the course of inquiry no intimation regarding domestic inquiry was even sent to labour department. It is also alleged by the petitioner that the inquiry was conducted only as per the decision of the respondent management since the fees and emoluments were paid by the management. The officer who conducted domestic inquiry was biased. Contrary to this RW1 Shri Hardesh Sharma has clearly stated in his affidavit that he had carried out the inquiry in accordance with Model Standing Orders depicted of Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 and also in accordance with principle of natural justice. PW2 Shri Kishori Lal Rana has also alleged that the inquiry was not carried out in accordance with the principle of natural justice. He has further submitted that a biased report have been prepared against the workers and they were not given opportunity of being heard. He has also stated that no person from the side of the workers were examined by the Inquiry Officer and the proceedings conducted by Inquiry Officer Shri Hardesh Sharma were partisans the inquiry report was prepared on the basis of false allegations. It has been pleaded on behalf of the petitioner that the Inquiry Officer had conducted biased inquiry and it is specifically mentioned that the whole episode between Kishori Lal Rana and one Rajat Kumar and Nishant the petitioner had nothing to do with quarrel but respondent management had implicated the petitioner in the inquiry to take revenge from the petitioner. It is also mentioned that Shri Kishori Lal Rana was link in the enquiry and he was not made a party and Inquiry Officer did not record single statement qua this episode. In the light of these averments made in the petition it is important to peruse the cross-examination of PW2 Shri Kishori Lal Rana who has denied in his cross-examination that on 30.5.2015 there was quarrel in the plant because of him. He admitted in his cross-examination that he cannot say whether the inquiry have been conducted properly or not since he was present for only one day during the inquiry when his statement was recorded and he did not have knowledge regarding the rest of the proceedings. He also admitted that petitioner was given charge-sheet based on which the proceedings were conducted against him. He also admitted that he was working as Administrator in Power Generation Plant till 31.3.2016 and after his retirement there is dispute with the respondent regarding his PF and gratuity. He also admitted that the petitioner Virender Kumar belongs to his adjoining village.

12. With regard to legal procedure and the principle of natural justice corresponding the inquiry proceedings it is also pertinent to peruse the cross-examination of petitioner. The petitioner admitted that on 22.10.2014 he had worked in general shift of respondent company. He also admitted that on 22.10.2014 and 23.10.2014 the charge-sheet was given to him for stopping the work. He also admits that similar charge-sheet was given to one Arjun and he had replied to the said charges. He admitted that respondent was not satisfied with the reply and they started inquiry proceedings. He admits that he took part in the inquiry proceedings and his statement was recorded by the Inquiry Officer. He admits that the proceedings and statements recorded during the inquiry a copy of the same was supplied to him. He admits that he was supplied the copy of inquiry report. He denied that on 30.5.2015 he and other workers had beaten one Rajat Kumar and Nishant however he admits that on 30.5.2015 a charge-sheet was given to them regarding this quarrel. He admits that he gave reply to the charge-sheet and since the respondent management was not satisfied with the reply, inquiry proceedings were started at hotel Manu Vinod, Satobari near Dal Lake Naddi, Dharamshala. He admits that he took part in these inquiry proceedings and appeared before the Inquiry Officer who disclosed to him in detail about the charges and the proceedings. He admits that copies of proceedings were given to him which also bears his signature. The copy of proceedings as Ext. R1. He admits that his Authorized Representative Shri Satish Kumar had cross-



examined the witnesses and the statement also bears his signature. Copy of statement is Ext. R2. He admits that his statement Ext. R3 was written by the Inquiry Officer and his written statement Ext. R4. He admitted that letter Ext. R5 was also given by him to the Inquiry Officer. He admits that Inquiry Officer had also given their second show cause dated 30.11.2015 Ext. R6, inquiry report Ext. R7 and he had replied to this letter. He admits that dismissal letter Ext. R8 was replied by him. He admits that after suspension allowances/subsistence allowances was given to him and all of his amounts have been settled by the respondent. He also admits that his gratuity was paid. He admits that all the proceedings against him was carried out in accordance with law. He also denied that he has been wrongly terminated. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr. in Civil Appeal No.1841 of 2010** as follows:—

“49. Having perused the enquiry proceedings along with the Enquiry Report, we are of the view that no fault of any nature can be noticed in the domestic enquiry proceedings for morethan one reason.

50. First, the appellant was given full opportunity at every stage of the proceedings which he availed; Second, he never raised any objection complaining causing of any prejudice of any nature to him before the Enquiry Officer; Third, he received all the papers/documents filed and relied upon by respondent No.1 Bank in support of the chargesheet; Fourth, he filed reply, cross examined the employer's witnesses, examined his witnesses in defense, attended the proceedings and lastly, the Enquiry Officer appreciated the evidence and submitted his reasoned report running in several pages holding the appellant guilty of both the charges.

51. In short, in our opinion, no case is made out to hold that the domestic enquiry suffers from any procedural lapse or was conducted in violation of the principle of natural justice thereby causing any prejudice to the rights of the appellant”.

13. In the present case also the oral and documentary evidence produced before this court clearly shows that full opportunity at every stage of proceedings was afforded to the petitioner in a domestic inquiry. The opportunity was availed by the petitioner. The petitioner never raised any objection complaining the prejudice which was being caused to him before the Inquiry Officer. All the documents, statements and evidence including inquiry report were supplied and the proceedings was carried out in the presence of the petitioner. It is alleged that the Inquiry Officer was appointed by the respondent management even though in accordance with the Standing Orders it is prerogative of the management to appoint the Inquiry Officer. The biased nature of the Inquiry Officer biased conduct was not evident from the proceedings of the inquiry. The inquiry appears to have been conducted in accordance with rules and procedure with no evident violation of the principle of natural justice. The allegations to the effect that Inquiry Officer was a biased could not be proved from any independent evidence. Contrary to the averments made in the petition that Shri Kishori Lal Rana was the important part of the inquiry it appears that statement PW2 Kishori Lal Rana was also recorded during course of inquiry. PW2 Kishori Lal Rana has also admitted in his cross-examination that except his statement recorded during the proceedings and he is not aware of the remaining proceedings being conducted by Inquiry Officer. Part of the cross-examination of the petitioner itself reveals that there was no violation of principle of natural justice and the inquiry was carried out in accordance with laws and procedure. Thus issue no.1 is decided in the favour of the respondent and against the petitioner.

### *Relief*

14. As a sequel to the above discussion on preliminary issue no.1 and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

15. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr.** in **Civil Appeal No.1841 of 2010** as follows:—

“52. Once it is held that the domestic enquiry is legal and proper the next question arises for consideration is as to whether the punishment imposed on the appellant is just and legal or it is disproportionate to the gravity of the charges”.

16. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

“[11A. **Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.**—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

17. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

18. Now come up for hearing of both the parties.

Be called after respite.

30.9.2024 Present: Sh. Gaurav Chaudhary, Ld. Counsel for petitioner

Sh. Sapna Thakur, Ld. Vice Counsel for respondent

19. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.

20. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **titled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under

section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

21. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation to the petitioner within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

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

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

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

Reference No. : 184/2017

Date of Institution : 16.8.2017

Date of Decision : 30.9.2024

Shri Satish Kumar s/o Shri Kishori Lal, r/o Village and Post Office Gharoh, Tehsil  
Dharamshala, District Kangra, H.P. . . *Petitioner.*

*Versus*

The Director, M/s Raheja Hydro Power Project, Gaj-II, SHP, Village Diara, Tehsil  
Dharamshala, District Kangra, H.P. . . *Respondent.*

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

For the Petitioner : Sh. Jitender Rana, Ld. Legal Aid Adv.

For Respondent : Sh. Rajiv Kumar Sharma, Ld. Adv.

**AWARD**

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

“Whether the termination of the services of Shri Satish Kumar s/o Shri Kishori Lal, r/o Village and Post Office Gharoh, Tehsil Dharamshala, District Kangra, H.P. by the Director, M/S Raheja Hydro Power Project, Gaj-II SHP, Village Diara, Tehsil Dharamshala, District Kangra, H.P. *w.e.f.* 22.02.2016 vide order dated 15.02.2016 (copy enclosed) on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry, as alleged by the workman, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that the petitioner was working as a worker in Raheja Hydel Power Pvt. Ltd. at Diyara, P.O. Totarani, Tehsil Dharamshala, District Kangra, H.P. According to petitioner he was performing his duty under the project since 2009 sincerely and to the satisfaction of his superiors without any complaint. The management had not issued any appointment letter to the petitioner nor any identity card and thus violated labour laws. During the course of construction of project the respondent had even not paid minimum wages to the employees. When workers formed the union then management/respondent retrenched the services of the petitioner by levelling false allegations of conducting biased domestic enquiry. The services of petitioner along-with other employees of the project were terminated on 22.2.2016 on the pretext that they raised their voice against anti workmen steps of management/respondent. The union of workers had submitted its demand charter to the respondent time and again. After the decision of conciliation meeting respondent management denied to pay pending amount of layoff time to the employees despite request and hence cause of action accrued. It is alleged that respondent management did not pay heed to the genuine and legal demands of the union and services of the petitioner and others were terminated by conducting fake domestic enquiry. It is further alleged that the petitioner and other employee had given proper notice to respondent to go on token strike on dated 22.10.2014. The demand notice reminder dated 9.7.2013 and request of employees dated 9.7.2013, demand notice dated 12.3.2014, conciliation proceedings in the office of Labour Inspector Dharamshala on 11.4.2014, reminder dated 22.8.2014, reminder dated 27.8.2014, demand notice dated 24.9.2014 and information letter about proposed strike was dated 20.10.2014. According to petitioner the strike was not illegal one. It is alleged that the respondent management first served petitioner notice under Section 9 Clause 2 of Payment of Wages Act, 1936 for demanding eight days salary as punishment for joining strike on 22.10.2014. Petitioner gave his satisfactory reply to the notice while salary of the petitioner were deducted on the pretext of joining the strike. It is submitted that petitioner being member of the employees union was raising voice for the welfare of the employees and due to demands of the employee the respondent was offended. The demands were being published in daily newspaper and the management was in search of excuse to terminate/retrench the services of the employees who were member of the union. The respondent management served notice upon the petitioner for conducting domestic enquiry for misconduct dated 22.10.2014 for joining the strike with other colleagues and demanding for their rights. It is alleged that Inquiry Officer who had conducted the inquiry was biased and helped the

respondent management by keeping aside witnesses of the petitioner and did not record statement of petitioner. It is alleged that Inquiry Officer has conducted domestic enquiry as per desire of the respondent management. Since the fees of enquiry and other emoluments were also being paid by the management. It is alleged that respondent management fabricated and concocted story and falsely implicated the petitioner and K.L. Rana, Satish Kumar, Sunil Kumar, Ajay Kumar, Arjun Singh and Vijay Kumar on the allegations that petitioner has given beating to his superior. The services of petitioner, Satish Kumar, Arjun Singh, Atma Ram and Onkar Singh were retrenched while all other workers are still working in the employment of the respondent. It is alleged that the respondent had wrongly and illegally retrenched the services of employees who were members of union. When the respondent had terminated the services of the petitioner complainant Rajat Kumar had compromised the matter with him thus the act of complainant clearly suggested that false complaint was made just to victimize the petitioner in connivance with the management. According to petitioner the whole episode was between one Shri K.L. Rana (Administration Incharge) and Shri Rajat Kumar and one Shri Satish Nishant. Petitioner was not concerned with the quarrel between the above said persons. The respondent management only indulged the petitioner in the enquiry to take revenge from him. Shri K.L. Rana who was important link in the enquiry was not made party and the Inquiry Officer did not record single statement qua this episode. Thus conduct of Inquiry Officer shows and suggest that the Inquiry Officer was biased against the petitioner and was interested to give favourable report in the favour of the respondent management. It is alleged that during course of domestic enquiry the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. During the course of inquiry no intimation regarding domestic inquiry was sent to labour department and the services of the petitioner were terminated on 22.2.2016. Subsequently a demand notice was preferred before the Labour Inspector, Kangra at Dharamshala on 19.6.2016 vide which the matter has been referred for the purpose of adjudication. According to petitioner he had rendered the services of 240 days continuously in one calendar year and employees junior to him are still on the roll of the respondent management. It is also alleged that respondent management has violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). In the light of above averment and allegations the petitioner has prayed that respondent be directed to reinstate the services of the petitioner with full back wages by holding the termination/retrenchment as wrong and illegal. The petitioner has also prayed that respondent department be directed to pay all the benefits of period during the petitioner remained terminated due to illegal order of retrenchment.

3. Respondent management by way of reply raised preliminary objections qua maintainability and suppression of material facts and disguise of facts by the petitioner. On merits, it is submitted that the petitioner had indulged in a grave misconduct during course of his employment in the Hydel Project of the respondent management. The respondent management also held an independent enquiry into misconduct of the petitioner by an independent person in accordance with the Industrial Employment (Standing Orders) Himachal Pradesh Rules 1973 and Amended Rules 1991 which are applicable to the respondent company. The enquiry was also in accordance with principle of natural justice. Inquiry Officer had afforded full opportunity to petitioner to produce any person as defence representative who was in employment of the respondent management in order to defend his case. The Inquiry Officer also afforded opportunity to petitioner to attend enquiry proceedings and he attended the enquiry proceedings. Petitioner was given opportunity to cross-examine the witnesses of the respondent and Inquiry Officer also afforded opportunity to the petitioner to produce his witnesses in his defence. Thus according to the respondent inquiry was conducted in lawful manner. It is also submitted that petitioner is gainfully employed earning more than what he earned from the respondent management. On merits, other averments made in the petition have been denied para-wise. It is asserted that petitioner first of all committed grave misconduct on 22nd October, 2014 when despite the reason of the pendency of conciliation proceedings before Conciliation Officer of Labour Department Himachal Pradesh

proceeded on strike with having meeting of mind with other co-workers and caused financial losses to the respondent management. Respondent charge-sheeted the petitioner as per law laid down under Model Standing Orders applicable to the project in the State of Himachal Pradesh where reply was filed by the petitioner and found to be non satisfactory. Respondent appointed outsider having no interest in work of the project and Inquiry Officer had conducted the inquiry as per Model Standing Orders. The Inquiry Officer after furnishing the enquiry submitted report. The respondent after considered the report in the light of fact and circumstances of the case, in the meantime petitioner quarrelled with the other workers of the project so the petitioner was again charge-sheeted as per Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 vide which charge-sheet dated 15.6.2015 under Rules 16 of the Model Standing Orders was issued. The petitioner filed the reply to the charge-sheet but the reply was found to be against the fact and non satisfactory. Keeping in view the principle of natural justice the management took the decision to hold an independent inquiry and respondent appointed a outsider Shri Hardesh Sharma, Advocate, r/o Nalagarh, District Solan, Himachal Pradesh as an Inquiry Officer to enquire into the matter in accordance with principle of natural justice. The Inquiry Officer gave notice of inquiry to the petitioner and petitioner participated in the inquiry proceedings. The Inquiry Officer had afforded full opportunity to the petitioner copy of proceedings and inquiry report was also given to the petitioner on each and every date of hearing. Petitioner not only cross-examined the respondent witnesses but also produced witnesses in his defence thus principle of natural justice were adhered at the time of conduct of enquiry. On the basis of report dated 10.7.2015 the respondent reached to the conclusion that petitioner is not in a position to serve the institution and confidence between employer and employee had been shattered and as such the respondent issued show cause notice dated 30.12.2015 in the shape of proposed penalty letter but the petitioner had not taken seriously and started in levelling false allegations against the responsible officers of the management. Thus the respondent was left with no other choice but to pass dismissal order dated 15.2.2016 effective from 22.2.2016. The amount of full and final payment was transferred on the account of petitioner and the petitioner had withdrawn the amount from the bank which shows that petitioner had accepted full and final financial benefits being sent by the respondent thus there remained no relationship of employer and employee between the parties. The notice under Section 9 Clause 2 of Payment of Wages Act, 1936 was issued by the petitioner as the petitioner has proceeded on illegal strike. Other averments made in the petition were denied and it is prayed that petition may be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties and considering the reference which had been received for the purpose of adjudication the following preliminary issue was framed by learned predecessor on 23.3.2019 as follows:—

1. Whether fair and proper enquiry has not been conducted against the petitioner by the respondent, as alleged? . . . *OPP.*

Relief

6. Petitioner in order to prove his case he has filed Affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He has also produced on record the copy of demand notice dated 9.7.2013 Ext. PW1/B, copy of demand notice dated 12.3.2014 Ext. PW1/C, copy of conciliation dated 11.4.2014 Ext. PW1/D, copy of demand notice dated 13.8.2014 Ext. PW1/E, copy of demand notice dated 22.8.2014 Ext. PW1/F, copy of demand notice dated 27.8.2014 Ext. PW1/G, copy of demand notice dated 24.9.2014 Ext. PW1/H, copy of demand notice dated 20.10.2014 Ext. PW1/I, copy of Bank Statement of Petitioner Ext. PW1/J, copy of dismissal letter

dated 22.2.2016 Ext. PW1/K, copy of newspaper cutting Ext. PW1/L and copy of demand notice dated 19.6.2016 Ext. PW1/M. Petitioner also examined PW2 Shri Kishori Lal Rana by way of affidavit Ext. PW2/A. This witness has stated that he had worked with the respondent from the year 2007 to 2016. The workers of the Hydel Project were making demands with the management since the year 2011 like appointment letter, identity card, bonus and other facilities. An application in this regard was also given to Managing Director, Raheja Hydel Power Project Pvt. Ltd., B-27 A Sushant Lok-1, Gurgaon, Haryana. The copy of same was issued to Labour Commissioner, Shimla. He further stated that he went to project site where Nishant Joshi and Rajat Kumar quarrelled with him and filed false complaint against him and other employees at Police Station Mcleodganj. Subsequently Satish Kumar, Sunil Kumar, Ajay Kumar, Arjun Singh, Virender Kumar and Vijay Kumar had compromised the matter despite which Raheja Hydel Power Project has started an inquiry and called the workers at Hotel Manu Vinod Satobari. This place was at considerable distance from the project site. However when the workers went there they were not given an opportunity of being heard and project management get conducted an enquiry from Inquiry Officer Shri Hardesh Sharma in biased manner. The report was prepared on the basis of false allegations and the workers were dismissed from their services. Virender Kumar, Satish Kumar, Arjun Singh, Atma Ram and Omkar were terminated while other workers were kept in the project. The workers had time and again made the management aware about their demands and also gave advance notice to the management for proceeding on strike however the management had ignored the demands of the workers and thrown them out from the project.

8. Respondent has examined Shri Hardesh Sharma by way of affidavit Ext. RW1/A. He has stated that he was appointed as Inquiry Officer on the basis of charge-sheet issued to the petitioner by the respondent. He conducted inquiry as per Model Standing Orders depicted in Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 as applicable to the respondent and in accordance of principle of natural justice. He further states that petitioner was apprised that he was authorised to conduct the enquiry. He recorded statements of witnesses by giving full chances to the petitioner to cross-examine the witnesses. He also afforded due opportunity to the petitioner. Copy of the statement of witnesses and inquiry proceedings were signed by the petitioner and his authorized person. Copies of statement of witnesses and proceedings were also supplied to petitioner on the same day. He also obtained the signature of petitioner and other person and thus enquiry was conducted as per principle of natural justice and in accordance with rule. The inquiry report according to him was based on document supplied during course of inquiry proceedings and oral evidence adduced by the parties. Respondent has also examined Shri Dilbag Singh, Plant Head of respondent management by way of affidavit Ext. RW2/A. He has reiterated the facts stated in the reply and copy of proceedings Ext. RW2/B, copy of charge sheet Ext. RW2/C and copy of inquiry report dated 24.9.2015 Ext. RW1/D.

9. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

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

Issue No.1 : No

Relief. : The reference is decided Accordingly

### REASONS FOR FINDINGS

#### *Issue No.1*

11. The reference qua termination of the services of petitioner Satish Kumar had been received by this court it was required to be adjudicated whether the domestic enquiry was

conducted without by adequate opportunity and whether the termination was in violation of the provisions of Industrial Disputes Act, 1947. It was alleged on behalf of the petitioner that domestic inquiry was conducted without affording adequate and sufficient opportunities in the domestic inquiry and thus termination was in violation of the provisions of the Act. In order to prove the allegations made in the petition, the petitioner has stated in his affidavit that the Inquiry Officer intentionally and deliberately ignored and neglected the statement given by the petitioner and favoured the respondent management. He also alleged that during the course of inquiry no intimation regarding domestic inquiry was even sent to labour department. It is also alleged by the petitioner that the inquiry was conducted only as per the decision of the respondent management since the fees and emoluments were paid by the management. The officer who conducted domestic inquiry was biased. Contrary to this RW1 Shri Hardesh Sharma has clearly stated in his affidavit that he had carried out the inquiry in accordance with Model Standing Orders depicted of Himachal Pradesh (Industrial Employment Standing Orders) Rules 1973 and Amended Rules 1991 and also in accordance with principle of natural justice. PW2 Shri Kishori Lal Rana has also alleged that the inquiry was not carried out in accordance with the principle of natural justice. He has further submitted that a biased report have been prepared against the workers and they were not given opportunity of being heard. He has also stated that no person from the side of the workers were examined by the Inquiry Officer and the proceedings conducted by Inquiry Officer Shri Hardesh Sharma were partisans the inquiry report was prepared on the basis of false allegations. It has been pleaded on behalf of the petitioner that the Inquiry Officer had conducted biased inquiry and it is specifically mentioned that the whole episode between Kishori Lal Rana and one Rajat Kumar and Nishant the petitioner had nothing to do with quarrel but respondent management had implicated the petitioner in the inquiry to take revenge from the petitioner. It is also mentioned that Shri Kishori Lal Rana was link in the enquiry and he was not made a party and Inquiry Officer did not record single statement qua this episode. In the light of these averments made in the petition it is important to peruse the cross-examination of PW2 Shri Kishori Lal Rana who has denied in his cross-examination that on 30.5.2015 there was quarrel in the plant because of him. He admitted in his cross-examination that he cannot say whether the inquiry have been conducted properly or not since he was present for only one day during the inquiry when his statement was recorded and he did not have knowledge regarding the rest of the proceedings. He also admitted that petitioner was given charge-sheet based on which the proceedings were conducted against him. He also admitted that he was working as Administrator in Power Generation Plant till 31.3.2016 and after his retirement there is dispute with the respondent regarding his PF and gratuity. He also admitted that the petitioner Satish Kumar belongs to his adjoining village.

12. With regard to legal procedure and the principle of natural justice corresponding the inquiry proceedings it is also pertinent to peruse the cross-examination of petitioner. The petitioner admitted that on 22.10.2014 he had worked in general shift of respondent company. He also admitted that on 22.10.2014 and 23.10.2014 the charge-sheet was given to him for stopping the work. He also admits that similar charge-sheet was given to one Arjun and he had replied to the said charges. He admitted that respondent was not satisfied with the reply and they started inquiry proceedings. He admits that he took part in the inquiry proceedings and his statement was recorded by the Inquiry Officer. He admits that the proceedings and statements recorded during the inquiry a copy of the same was supplied to him. He admits that he was supplied the copy of inquiry report. He denied that on 30.5.2015 he and other workers had beaten one Rajat Kumar and Nishant however he admits that on 30.5.2015 a charge-sheet was given to them regarding this quarrel. He admits that he gave reply to the charge-sheet and since the respondent management was not satisfied with the reply, inquiry proceedings were started at hotel Manu Vinod, Satobari near Dal Lake Naddi, Dharamshala. He admits that he took part in these inquiry proceedings and appeared before the Inquiry Officer who disclosed to him in detail about the charges and the proceedings. He admits that copies of proceedings were given to him which also bears his signature. The copy of proceedings as Ext. R1. He admits that his Authorized Representative Shri Satish Kumar had cross-



examined the witnesses and the statement also bears his signature. Copy of statement is Ext. R2. He admits that his statement Ext. R3 was written by the Inquiry Officer and his written statement Ext. R4. He admitted that letter Ext. R5 was also given by him to the Inquiry Officer. He admits that Inquiry Officer had also given their second show cause dated 30.11.2015 Ext. R6, inquiry report Ext. R7 and he had replied to this letter. He admits that dismissal letter Ext. R8 was replied by him. He admits that after suspension allowances/subsistence allowances was given to him and all of his amounts have been settled by the respondent. He also admits that his gratuity was paid. He admits that all the proceedings against him was carried out in accordance with law. He also denied that he has been wrongly terminated. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr. in Civil Appeal No.1841 of 2010** as follows:—

“49. Having perused the enquiry proceedings along with the Enquiry Report, we are of the view that no fault of any nature can be noticed in the domestic enquiry proceedings for more than one reason.

50. First, the appellant was given full opportunity at every stage of the proceedings which he availed; Second, he never raised any objection complaining causing of any prejudice of any nature to him before the Enquiry Officer; Third, he received all the papers/documents filed and relied upon by respondent No.1 Bank in support of the chargesheet; Fourth, he filed reply, cross examined the employer's witnesses, examined his witnesses in defense, attended the proceedings and lastly, the Enquiry Officer appreciated the evidence and submitted his reasoned report running in several pages holding the appellant guilty of both the charges.

51. In short, in our opinion, no case is made out to hold that the domestic enquiry suffers from any procedural lapse or was conducted in violation of the principle of natural justice thereby causing any prejudice to the rights of the appellant”.

13. In the present case also the oral and documentary evidence produced before this court clearly shows that full opportunity at every stage of proceedings was afforded to the petitioner in a domestic inquiry. The opportunity was availed by the petitioner. The petitioner never raised any objection complaining the prejudice which was being caused to him before the Inquiry Officer. All the documents, statements and evidence including inquiry report were supplied and the proceedings was carried out in the presence of the petitioner. It is alleged that the Inquiry Officer was appointed by the respondent management even though in accordance with the Standing Orders it is prerogative of the management to appoint the Inquiry Officer. The biased nature of the Inquiry Officer biased conduct was not evident from the proceedings of the inquiry. The inquiry appears to have been conducted in accordance with rules and procedure with no evident violation of the principle of natural justice. The allegations to the effect that Inquiry Officer was a biased could not be proved from any independent evidence. Contrary to the averments made in the petition that Shri Kishori Lal Rana was the important part of the inquiry it appears that statement PW2 Kishori Lal Rana was also recorded during course of inquiry. PW2 Kishori Lal Rana has also admitted in his cross-examination that except his statement recorded during the proceedings and he is not aware of the remaining proceedings being conducted by Inquiry Officer. Part of the cross-examination of the petitioner itself reveals that there was no violation of principle of natural justice and the inquiry was carried out in accordance with laws and procedure. Thus issue no.1 is decided in the favour of the respondent and against the petitioner.

### *Relief*

14. As a sequel to the above discussion on preliminary issue no.1 and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

15. Hon'ble Supreme Court has held in **M.L. Singla vs. Punjab National Bank and Anr.** in **Civil Appeal No.1841 of 2010** as follows:—

“52. Once it is held that the domestic enquiry is legal and proper the next question arises for consideration is as to whether the punishment imposed on the appellant is just and legal or it is disproportionate to the gravity of the charges”.

16. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

“[11A. **Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.**—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]”

17. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionality to the misconduct alleged in the charge-sheet.

18. Now come up for hearing of both the parties.

Be called after respite.

30.9.2024 Present: Sh. Gaurav Chaudhary, Ld. Counsel for petitioner

Sh. Sapna Thakur, Ld. Vice Counsel for respondent

19. Learned Counsel for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The Inquiry Officer was biased, no option of petitioner was called before appointment of Inquiry officer and undue harsh punishment has been imposed on the petitioner.

20. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully misconducted himself and polluted the atmosphere of the company. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **titled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

“The power under section 11-A imposes wide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under

section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

21. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation to the petitioner within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

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

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

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

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

Reference No. : 12/2020  
Date of Institution : 21.01.2020  
Date of Decision : 30.9.2024

Shri Rajeev Kumar s/o Shri Jora Ram, r/o V.P.O. Ghar, Tehsil Palampur, District Kangra,  
H.P. . . . *Petitioner.*

*Versus*

- i. The Chaiman, Bishop PK Samantaroy, Bishop Diocese of Amritsar, 26, RB Parkash Chand Road, Opposite Police Lines, Amritsar, District Amritsar, Punjab.
- ii. The Principal, Saint Pauls Senior Secondary School, Palampur, District Kangra, H.P.

- iii. Most Rev. Bishop (P.C. Singh) Moderate Church of North India, 16, Pt. Pant Marg, New Delhi. . . Respondents.

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

For the Petitioner : Sh. N.L. Kaundal, Ld. A.R.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

**AWARD**

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner.

“Whether termination of services of Sh. Rajeev Kumar s/o Shri Jora Ram, r/o V.P.O. Ghar, Tehsil Palampur, District Kangra H.P. by (i) the Chairman, Bishop PK Samantaroy, Bishop Diocese of Amritsar, 26, RB Parkash Chand Road, Opposite Police Lines, Amritsar, District Amritsar, Punjab (ii) the Principal, Saint Pauls Senior Secondary School, Palampur, District Kangra, H.P. (iii) Most Rev. Bishop (P.C.Singh) Moderate Church of North India, 16, Pt. Pant Marg, New Delhi *w.e.f.* 31.10.2018 (who was employed as driver), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and regularization the above worker is entitled to from the above employers?”

2. The brief facts of the claim petition are that the petitioner was appointed by Sh. Virender Pal Singh, Principal, Sant Paul's, Senior Secondary School, Palampur, Tehsil Palampur, District Kangra, H.P. as Driver (Temporary/ probation) for the period from 12.08.2014 to 31.03.2015 on consolidated salary of Rs. 3600/- per month vide letter dated 12.08.2014. After the completion of the temporary period of service being satisfactory the services of the petitioner were engaged /continued as permanent employee of institution by the respondent No. 2 without any appointment letter as per the service Rule of the Institution. He worked continuously upto 31.10.2018. It is submitted that during his services with the respondents the work and conduct of the petitioner were fully satisfactory and he never given any chance of his complaint to the management of school. His work was appreciated as is evident from experience certificate dated 02.12.2016 issued by the respondent No.2. It is alleged that services of the petitioner were terminated vide letter dated 05.10.2018 by the respondent No.2. *w.e.f.* 31.10.2018 without any show cause notice or inquiry being conducted against him. One month pay in lieu of notice period and retrenchment compensation was not paid to him as per the provision of Section 25-F(a&b) of the Industrial Disputes Act, 1947. It is alleged that respondents did not comply with the provisions of the Act and hence termination of the petitioner was null and void. The petitioner had completed 240 days in each and every calendar year as well as last twelve calendar preceding months from the date of his illegal termination. It is prayed that termination of the petitioner is liable to be set aside with direction to respondent to reinstate the service of the petitioner with full back wages, seniority, continuity in service with all other consequential service benefits. According to the petitioner, persons junior to him were retained in service namely Banti s/o Sh. Ishwar Dass in violation of the Section 25-G of the I.D. Act, 1947. It is alleged that after termination of services of the petitioner new appointment was made in the post of the petitioner without affording any opportunity to the petitioner for reemployment in violation of Section 25-H of the Industrial Disputes Act, 1947. It is alleged that the services of petitioner was terminated to avoid regular pay scale, regularization of service and benefits of EPF and his service were terminated by the respondent No.2 deliberately. According to the petitioner, the respondent school/institution has their own buses, therefore, the post of driver was permanent in nature. The services of the petitioner

were engaged against the permanent post. The management also provided accommodation to the petitioner within the school premises. The petitioner services were, however, terminated in mid-session of the school even though his children were studying with the respondents school. The act of the respondents is alleged to be in violation of "Principle of Natural Justice" and provisions of the Industrial Disputes Act, 1947. The petitioner has prayed that the termination order dated 05.10.2018 may be set aside and quashed. Respondent be directed to reinstate the services of the petitioner with full back wages, seniority, continuity in service with all other consequential service benefits. Petitioner also prayed that the respondent be directed to pay the benefit of EPF, Earned Leave and regular pay scale to the petitioner *w.e.f.* 01.04.2015 onwards.

3. Respondent by way of reply has raised preliminary objection qua maintainability, suppression of material fact, cause of action etc. It is admitted that the petitioner was appointed by the respondent No.2 as temporary Driver on consolidated salary of Rs.3600/- per month for the period between 12.08.2014 to 31.03.2015 vide letter dated 12.08.2014. It is denied that the service of the petitioner was engaged as permanent employee of institution. According to the respondent the services of the petitioner was engaged on contractual basis and the same was renewed. The last contract entered between the petitioner and respondent No. 2 was for the period between 01.04.2018 and 31.03.2019. It is also alleged that the contract between the petitioner and respondent No. 2 was on temporary basis and contained a clause stating that the services of petitioner could be terminated at any time giving one calendar month notice or one calendar month salary in lieu thereof. The petitioner was provided an accommodation by the respondent No.2 on license for the period of service, however, the petitioner had not vacated the accommodation till date despite his termination as driver. The license to stay in accommodation provided was terminated with the termination notice dated 05.10.2018. The onus of proving regularization was on petitioner and he cannot claim himself as a permanent employee. It is denied that the conduct of the petitioner was fully satisfactory and he never gave any chance of complaint to the management of school. It is also denied that his work was appreciated by the respondent. It is further submitted that the petitioner was warned several times for his misbehaviour with the students and staff. Accordingly to the respondent the case of the petitioner is not of retrenchment as the services of the petitioner were on contractual nature and terminated in pursuance to the stipulation of termination under contract. Other averments made in the petition including relief prayed have been denied and it is prayed that claim be dismissed with costs.

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

5. On the basis of the pleadings of the parties, the following issues were framed on 11.07.2022 for adjudication and determination:—

1. Whether the termination of the services of the petitioner *w.e.f.* 31.10.2018 by the respondents is violation of the provisions contained under Section 25-F of the Act, as alleged? . . . *OPP.*
2. Whether the respondent has violated the provisions contained under Section 25-G and 25-H of the Act, as alleged? . . . *OPP.*
3. If issues no.1&2 are proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
5. Whether the petitioner has no cause of action and locus standi to file the case, as alleged? . . . *OPR.*

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

7. Relief

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A. He has reiterated the facts stated in the petition and produced on record letter dated 12.8.2014 Ext. PW1/B, experience certificate dated 2.12.2016 Ext. PW1/C and termination letter dated 05.10.2018 Ext. PW1/D in evidence. Petitioner also examined Sh. Pawan Kumar Gupta, Superintendent in the St. Paul's Sr. Sec. School Palampur as PW2. He has tendered in evidence mandays chart Ext. PW2/A, salary details of petitioner Ext. PW2/B, conduct rules Ext. PW2/C, extract of attendance register Ext. PW2/D, seniority list of contractual employees Ext. PW2/E and seniority list of regular employees Ext. PW2/F.

7. Respondent has examined by way of affidavit Sh. Virendra Pal Singh, Principal, St. Paul Sr. Sec. School, Palampur, District Kangra, H.P. as RW-1 and he has reiterated the facts in his affidavit stated in the reply. He has produced on record seniority list Ext. R to Ext. R-14, mandays chart Ext. R-15, receipts Ext. R-16 and Ext. R-17 and cheque Ext. R-18 in evidence.

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

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

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Decided accordingly

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

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

### REASONS FOR FINDINGS

#### *Issue No.1*

10. The petitioner has alleged that his services were engaged by the respondents on temporary/probation basis from 12.08.2014 to 31.03.2015 on consolidated salary of Rs. 3600/- per month and after completion of probation/temporary service he was engaged as a permanent workman. He further alleged that his services were unlawfully terminated *w.e.f.* 31.10.2018 without any show cause notice or enquiry and retrenchment compensation was not paid. He also alleged that his services was engaged against permanent post and he was provided accommodation by the respondent school.

11. R-1 Sh. Virender Pal Singh, Principal, St. Paul Sr. Sec. School, Palampur has denied that petitioner's services were engaged as permanent employee. Accordingly to him the services of the petitioner came to an end on the basis of stipulation in the contract. The contract of the petitioner was for fixed period and was renewed from time to time. He also mentioned that according to the stipulation contract the services of the petitioner could be terminated at any time by giving one month notice or one month salary in lieu thereof.

12. Appointment letter Ext. PW1/B is produced on record which is admitted by PW1 Sh. Rajiv Kumar petitioner. The respondents are relying upon the documents Ext. PW1/B and have asserted that the employment of the petitioner was on contractual basis and as per the stipulation in Ext. PW1/B, he could be terminated with one month notice or salary. Respondents have also asserted that last contract of service between petitioner and respondent was from 01.04.2018 to 31.03.2019 and specific statement to this effect is made by RW-1 Sh. Virender Pal Singh. Petitioner in his cross-examination has initially admitted but subsequently denied that there was contract of service between him and respondent from 01.04.2018 to 31.03.2019. No doubt, petitioner has denied that no appointment letter showing him as regular employee was issued but respondents but the respondents have not produced the contract of service executed/renewed between the petitioner and respondent subsequent to 31-03-2015. Admittedly the contract Ext. PW1/B was with respect to time period 12.08.2014 to 31.03.2015 and the words contractual basis is not mentioned therein. With respect to time period 31.03.2015 to the date of dispensing with the service of the petitioner *i.e.* 05.10.2018, no contract document or contract renewal document could be produced by the respondent. As per documents Ext. PW1/B the petitioner was appointed on consolidated salary of Rs. 3600/- only but the salary slip Ext. R-y produced by the respondent shows the basic pay of Rs. 3600/- +DA Rs.1800/- +other allowance Rs.1800+ conveyance allowance Rs. 500/- as on 03.06.2017. This is a important document showing monthly salary of Rs. 7700/- paid to the petitioner by the respondent.

13. Learned counsel for the respondent had contended that the petitioner had not completed 240 days of continuous employment of twelve calendar month preceding his termination, hence his case thus does not fall within under Section 25-F of the Industrial Disputes Act, 1947. The mandays chart of the petitioner is Ext. PW2/A filed by PW2 Sh. Pawan Kumar Gupta from the respondent school had also submitted that the petitioner did not complete 240 days in any calendar year. The comparison of mandays chart Ext. PW2/A and attendance register Ext. PW2/D reflects remarkable discrepancy in the calculation of mandays chart. The salary slip as well as appointment letter reveals that the petitioner was paid a consolidated salary and not wages basis. The discrepancy in attendance chart and mandays calculated by the respondent couple with nature of work *i.e.* Driver in the school bus of respondent. It can safely be inferred that the petitioner had completed required mandates in twelve months preceding his termination.

14. Non-production of alleged contract between the petitioner and the respondent or renewal of contract from 31.03.2015 till 31.03.2019 also lead to adverse inference against the respondent that no such renewal of contract took place between the petitioner and respondent. Consequently the stipulation in the initially appointment letter Ext. PW1/B vide which the employment was described as temporary from 01.04.2014 to 31.03.2015 cannot be ground to terminate the services of the petitioner in the year 2018. As mentioned above the petitioner was not only paid salary but also D.A. and other allowance. It appears that the alleged contractual employment of the petitioner by the respondent was merely camouflage to deprive the petitioner from benefits legally available to him under Provisions of the Industrial Disputes Act. Section 2 clause (ra) of the Industrial Dispute Act, 1947 described "unfair labour practice" means any of the practices specified in the Fifth Schedule part-10;" Fifth Schedule Part 10 reads thus:—

"To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

15. Considering the above provisions of the Industrial Disputes Act, 1947 and the conduct of the respondent in the employment of the petitioner it can be safely concluded that the petitioner was being deprived of his rights under the Industrial Disputes Act, 1947 in the light of alleged contractual employment. No evidence of contractual employment could be produced corresponding to the date of termination of the petitioner. Thus the termination of the petitioner w.e.f. 31.10.2018 by the respondent was in violation of the provisions of the Section 25-F of the I.D. Act, 1947 and Issue No. 1 accordingly decided in favour of the petitioner.

*Issue No.2*

16. The petitioner has alleged that after termination of his service other persons have been employed to the same post and new appointment has also been made by the respondent. The petitioner was not given an opportunity for reemployment by the respondent after his termination. In this regard the RW1 Sh. Virender Pal Singh admitted in his cross-examination that the driver junior to the petitioner have been retained in service and fresh driver has also been appointed after termination of the petitioner. It is hence proved that in violation of provision under Section 25-G and 25-H of the Industrial Disputes Act, 1947. The respondents have retained junior to the petitioner in service and also made new appointment without giving an opportunity of reemployment of the petitioner. Thus, issue No.2 decided in favour of the petitioner.

*Issue No. 3*

17. It has been discussed above issues No. 1&2 that the services of the petitioner were terminated w.e.f. 31.10.2018 in violation of the specific provision under Section 25-F of the I.D. Act, 1947 and it is also proved that the respondents were retaining junior drivers, appointed after the appointment of petitioner but also made fresh appointment without affording an opportunity to the petitioner for reemployment. It is mentioned in the pleading on behalf of the respondents that the petitioner was warned several time regarding his conduct, however, there is no evidence of any show cause notice or inquiry pertaining to his alleged misconduct against the petitioner. Thus, it is proved that the respondent had violated the mandatory provisions of the Industrial Disputes Act, 1947 and termination of the petitioner was carried out in illegal manner. The petitioner is entitled for his reinstatement to the post of driver w.e.f. 31.10.2018 along-with seniority and continuity in service and other consequential benefits except back wages. The amount of EPF, earned leave and regular pay scale as is not subject matter in the reference. Hence, no order in this regard. However, the petitioner is entitled for compensation of Rs. 1,00,000/- (Rs. One Lac only) in lieu of back wages. Issue No. 3 accordingly decided in favour of the petitioner.

*Issues No. 4, 5 & 6.*

18. Onus of proving these issues was on the respondents. Maintainable of the petition was specifically challenged on the ground that the petitioner was merely contractual employee. No evidence to this effect could be produced to prove that the petitioner was working on contractual basis at the time of his termination. The petitioner accordingly had cause of action and locus standi to challenge his termination which was in violation of the provisions of Industrial Disputes Act, 1947. No such fact appeared from the evidence which is suggest that the petitioner had suppressed the facts material for adjudication of the case. Accordingly Issues No. 4, 5 & 6 are decided in favour of the petitioner and against the respondents.

*Relief*

19. In view of my findings on the issues no. 1 to 6 above the reference is decided to the effect of petitioner. The respondent is directed to re-instate the services of the petitioner to the



post of driver *w.e.f.* 31.10.2018. The petitioner is also entitled for seniority, continuity in service with all consequential benefits. The respondent is also directed to pay lump-sum compensation to the tune of Rs.1,00,000/- (Rs. One Lac only) to the petitioner in lieu of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 109/2021

Date of Institution : 27.9.2021

Date of Decision : 30.9.2024

Shri Sunil Kumar s/o Late Shri Rattan Chand, r/o VPO Chakmoh, Tehsil Badsar, District Hamirpur, H.P. . . *Petitioner.*

*Versus*

1. Swiss Garnier Life Sciences, No.25, Kambar Street, Alandur, Chennai (Tamil Naidu) 600016, through its General Manager.
2. Swiss Garnier Biotech, Industrial Area Mehatpur, District Una, H.P. through its General Manager . . *Respondents.*

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

For the Petitioner : Sh. Akash Sharma, Ld. Adv.

For Respondent(s) : Sh. R.S. Rana, Ld. Adv.

**AWARD**

This is a claim petition under Section 2-A of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of filing of dispute before the Conciliation Officer.

2. The brief facts as stated in the claim petition are that the applicant was appointed as Chemist PPIC on 4.12.2012 by the respondent no.1 and he was ordered to join the plant of

respondent no.1 at Mehatpur District Una, H.P. No appointment letter was issued to the applicant however the applicant received a appointment letter and terms and condition later on through RTI from Labour Office Una. The salary of the applicant was approximately Rs.23250/- per month after deduction. It is submitted that applicant working to the satisfaction of respondent no.1 and he was re-designated as Executive PPC on 1.7.2014 and he got information vide letter dated 28.7.2014 issued by the respondents. Thereafter the applicant was transferred by respondent no.1 to the office of respondent no.2 i.e. sister concern of respondent no.1 at Industrial Area Mehatpur, District Una, H.P. on 24.4.2017 w.e.f. 2.5.2017. It is alleged that applicant had always discharged his duties with full devotion and the satisfaction of his senior at each and every place of working but the respondents however all of sudden without any reason, a advance notice or oral information prohibited the petitioner from entering the premises of respondent no. 2 and to perform his regular job. Respondent no.2 issued an end of service letter on 28.8.2018 without assigning any reason. Applicant wrote a letter dated 20.12.2018 to respondent no. 2 and also forwarded to Labour Officer, Una regarding termination from his job without any cause. Respondent no.2 was made a very unrealistic reply in the said proceedings. According to petitioner he was not at all interested to leave his job and intended to work with respondent no.2. Later on respondent no.2 deposited in the account of petitioner the salary for the month of August, 2018 in the month of September, 2018 along-with sum of Rs.104510/- on 26.10.2018 in the account of petitioner. It is alleged that the services of applicant have been terminated in a vague manner even though work was available with the respondents. Respondent no.2 has breached the terms and condition of appointment letter with the decision of end of services. It is alleged that respondent no.2 acted in arbitrary manner, violating the rules and procedure and also in violation of the provisions of the Industrial Disputes Act, 1947. The petitioner has prayed that the end of service/termination dated 28.8.2018 issued by respondent no.2 may be set aside and petitioner be reinstated as Executive PPC along-with all consequential benefits and back wages since 28.8.2018. Petitioner has also prayed for interest on the amount awarded, legal expenses and damages.

3. Respondents by way of reply raised preliminary objections qua maintainability, suppression of material facts by the petitioner, locus standi, cause of action and petitioner not falling within the definition of workman under the Industrial Disputes Act, 1947. On merits, it is asserted that the petitioner was appointed in the concerned office of respondents and appointment letter was given to the petitioner wherein all the terms and conditions of appointment were mentioned. It is further submitted that work of petitioner was not to the satisfaction of respondents as petitioner used to come late every day and despite being orally requested to maintain the decorum of company he ignored the warnings and refused to adhere to the instructions of the respondents. The petitioner was given the post of Executive however it was very shameful that still petitioner was late everyday and absented himself without leave. On the request of petitioner he was not transferred to other town. It is further alleged that petitioner never discharged his duties diligently and with devotion. The respondents have suffered loss of income due to act of the petitioner and behaviour of the petitioner towards his senior and other staff was also rude and aggressive. Since the petitioner did not mend his behaviour it was difficult for the management to continue his job. Thus services of the petitioner were terminated as per terms and conditions of appointment letter. He had received an amount of Rs.1,04,509/- and never objected to it. Respondents has asserted that there was no violation of any provisions of the Industrial Disputes Act, 1947 and petitioner was working as chemist and his services were dispensed with in accordance with terms and conditions of letter of appointment. It is asserted that petitioner was working as executive PPIC and his services were terminated in accordance with the terms and conditions of letter of appointment. It is prayed that the petition may be dismissed in the interest of justice.

4. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

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

1. Whether termination of services of petitioner by respondent no.2 *w.e.f.* 28-08-2018 without following the provisions of I.D. Act, 1947 is/was illegal and liable to be set aside, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what consequential service benefits *viz.* seniority, arrears of pay/wages, the petitioner is entitled to from the respondent? .. *OPP.*
3. Whether the claim petition is not maintainable? .. *OPR.*
4. Whether the petitioner has no locus standi to file the present Claim? .. *OPR.*
5. Whether the petitioner has no enforceable cause of action against the respondent? .. *OPR.*
6. Whether the petitioner has not approached this Court with clean hands. If so, its effect? .. *OPR.*

Relief

6. The petitioner in order to prove his case produced his affidavit Ext. AW1/A wherein he has reiterated the averments made in the pleadings. He has also produced on record letter dated 4.12.2012 Ext. PW1/B, terms and conditions Ext. PW1/C, letter dated 28.7.2014 Ext. PW1/D, another letter dated April, 2017 Ext. PW1/E, letter dated 28th August, 2018 Ext. PW1/F, full and final settlement of account Ext. PW1/G and letter dated 20.12.2018 of the petitioner Ext. PW1/H.

7. Respondent has examined Shri Mahinder Singh, Deputy General Manager-HR who produced his affidavit RW-1 wherein he has reiterated the facts stated in the reply.

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

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

Issue No.1	: Yes
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

### REASONS FOR FINDINGS

*Issue No.1*

10. Learned Counsel for the petitioner has submitted that the termination of the services of the petitioner by the respondents vide letter “end of service” on 28.8.2018 without assigning any

reason was clearly violative of the provisions of the Industrial Disputes Act, 1947. On the contrary the learned counsel for the respondents has vehemently argued that the present petition is not maintainable before this court/tribunal as the petitioner does not fall within the definition of workman under the Industrial Disputes Act, 1947. The petitioner has submitted and admitted the fact that petitioner was initially appointed as a Chemist PPIC and thereafter he was re-designated Executive PPC by respondents no.1 and 2. The definition of workman under Section 2 clause (s) under the Industrial Disputes Act, 1947 provides as follows:—

“2(s)[ "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [ *Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).*]

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]”.

11. It is argued by the learned counsel for the respondents that since the petitioner had been re-designated as Executive PPC he was performing the function of supervisory nature by nature of powers vested in him and his wages were much more than ten thousand rupees per mensem. Thus it is asserted that he does not fall within the definition of workman. The learned Counsel for the petitioner has however submitted that no work of supervisory nature was ever assigned to the petitioner. He also submitted that the petitioner had not been promoted but re-designated by respondents and in the circumstances since the petitioner was not performing any work of supervisor he cannot be excluded within the Section 2(s) of the Industrial Disputes Act, 1947.

12. It is important to peruse the cross-examination of the petitioner who admitted that he was designated as Executive of particular Wing by the respondent. He has clarified during the course of deposition that no junior was working under him. The appointment letter AW/1D his duty has changed in designation. The contents of this letter show that terms and conditions of services remained same as the initial letter of appointment but the petitioner was merely re-designated as Executive PPIC. The petitioner has denied that he was doing any supervisory function after his re-designation. In these circumstances no evidence has been produced by the respondents to establish that Ext. AW1/D was corresponding to a promotion and changed the nature of the services of the petitioner whereby he was acting under the supervisory capacity. Letter Ext. AW1/D appears to be merely a change in designation of the petitioner without any change in nature of duty being performed by him. In these circumstances the petitioner can be included within the definition of workman under the Industrial Disputes Act.

13. It is claim of the petitioner that despite being in service with the respondents no.1 and 2 his services were dispensed with without any notice and without any inquiry. Respondents have not denied the continuous employment of the petitioner with the respondents from the year 2012 till 2018. In these circumstances there is no requirement of separately proving the continuous work by the petitioner for 240 days preceding his termination. It has been alleged by the respondents that the petitioner frequently absented from his duty, he arrived late at work. It is also pleaded that the conduct of the petitioner towards his seniors and other staff was rude and aggressive. The respondents have also asserted that the wrong order had been placed by the petitioner which is resulted in monetary loss to the respondent company. The document Ext. RA has been produced on the case file. The said document is admitted by the petitioner. It is pertinent to observe that there are specific allegations of misconduct and misbehaviour of the petitioner however the respondents have not produced on record any show cause notice, charge-sheet or inquiry proceedings subsequent to charge-sheet on the basis of which the allegations of misconduct were proved against the petitioner resulting in his termination on the basis of his misconduct. In-fact RW1 Shri Mahinder Singh admitted in his cross-examination that they have not issued any show cause notice to the petitioner for his wilful absence from his duties. He even admitted that amount of Rs.1,04,509 which was deposited in the account of the petitioner was not asked to be paid by the petitioner. Though, he has denied that the services of the petitioner were terminated in violation of the provisions of the Industrial Disputes Act, 1947. Circumstances in which the petitioner appears to have been dispensed with his services falls squarely within the provisions of Section 2(oo) of the Industrial Disputes Act, 1947 which reads as follows:—

“2(oo)[ "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include - *[Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953). ]*

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

14. The learned Counsel for the respondents has submitted that petitioner had been appointed by the respondents on the basis of terms and conditions which are Ext. AW1/C. In accordance with the conditions no. 5 and 8 first the transfer and thereafter the termination of petitioner was carried out. It is important to mention here that condition no.8 of Ext. AW1/C is clearly violative of the provisions of the Industrial Disputes Act, 1947. Section 2 Clause (ra) mentions unfair labour practice as practices specified in Vth Schedule of the Industrial Disputes Act. In accordance with the Vth Schedule Rule no. 5 reads as follows:—

“(5) To discharge or dismiss workmen—

- (a) by way of victimization;
- (b) not in good faith, but in the colorable exercise of the employer’s rights;
- (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
- (d) for patently false reasons;
- (e) on untrue or trumped up allegations of absence without leave;

- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
- (g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment”.

15. Condition no. 8 of the terms and conditions of the service clearly mentions that service of employee can be terminated without assigning any reason by giving one month's notice. The said condition is in violation of the principles of natural justice which can be instrument for victimization of workman. Thus the said condition being in violation of provisions of the Industrial Disputes Act amounting to unfair labour trade practices the petitioner was not bound by such condition. To conclude, on the basis of oral evidence as well as documentary produced before this court it is clear that petitioner was employed with the respondents as workman from 4.12.2012. His services were terminated without following any due procedure and without assigning any reason. Thus the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act and principles of natural justice, accordingly issue no.1 is decided in the favour of petitioner.

#### *Issue No.2*

16. It has been proved while discussing issue no.1 that termination of services of petitioner was in violation of principle laid down under Industrial Disputes Act as well as principle of natural justice. In these circumstances petitioner is entitled for reinstatement as a Executive PPIC with respondent no.2 along with all consequential benefits and compensation to the sum of Rs.1,00,000/- in lieu of back wages. Issue no.2 is decided accordingly.

#### *Issues No. 3, 4 and 5*

17. All these issues shall be taken up together for adjudication.

18. The onus of proving these issues on the respondents The plea of the respondents that petitioner was not workman hence this court does not possess jurisdiction to entertain the claim does not appear to be genuine considering the terms of appointment and nature of work being done by the petitioner. Since the services of the petitioner have been terminated in violation of the provisions of the Industrial Disputes Act, 1947 the petitioner had a locus standi and forcibly cause of action in his favour.

#### *Issue No.6*

19. During the course of evidence no such facts have emerged which would point towards suppression of material facts on behalf of the petitioner while approaching this court for his claim hence this issue is decided in the favour of the petitioner.

#### *Relief*

20. In view of my discussion on the issues no. 1 to 6 the claim petition succeeds and is partly allowed. The petitioner is entitled for reinstatement as a Executive PPIC with respondent no.2 along with all consequential benefits and compensation to the sum of Rs.1,00,000/- in lieu of back wages along with interest @ 6% from date of illegal termination in year 2018 till realization. Parties are left to bear their costs.

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

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

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

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### CHANGE OF NAME

I, Ram Prakash s/o Sh. Mali Ram aged about 44 years, r/o V.P.O. Mandhol, Tehsil Jubbal, District Shimla (H.P.)-171215 declare that I have changed my minor daughter's name from Kumari Sneha (Old Name) to Sneha Mastana (New Name). All concerned please may note.

RAM PRAKASH  
*s/o Sh. Mali Ram,*  
*r/o V.P.O. Mandhol,*  
*Tehsil Jubbal, District Shimla.*

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