राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 28 मार्च, 2025 / 07 चैत्र, 1946

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

NOTIFICATION

Shimla, the 17th March, 2025

No. HPERC/Supply Code/438.— In exercise of the powers conferred by Section 50 and clause (x) of sub-section (2) of Section 181 of the Electricity Act, 2003 (36 of 2003),

read with Section 21 of the General Clauses Act, 1897 (10 of 1897), and all other powers enabling it in this behalf, the Himachal Pradesh Electricity Regulatory Commission, after previous publication, hereby makes the following further amendments in the Himachal Pradesh Electricity Supply Code, 2009, published in the Rajpatra, Himachal Pradesh on 29th May, 2009, namely:—

REGULATIONS

1. Short title and commencement.—(1) This Code may be called the Himachal Pradesh Electricity Supply (Sixth Amendment) Code, 2025.

(2) It shall come into force on the 1st day of April, 2025

2. Amendment of para 1.2.—In para 1.2 of the Himachal Pradesh Electricity Supply Code, 2009 (hereinafter referred to as the "Principal Code")—

(i) after sub-para 1.2.1, the following sub-para 1.2.1A shall be inserted, namely:—

"***1.2.1A 'Accuracy'*** *means the accuracy of meter vis-a-vis it's Accuracy class.*

"Accuracy class" shall have the meaning as specified in the regulations framed by the Central Electricity Authority under section 55 of the Act;"; and

(ii) after sub-para 1.2.41, the following *sub-para* 1.2.41A, shall be inserted, namely:—

"1.2.41A'Resident Welfare Association or Association' *means an association comprising all the property owners within a Co-operative Group Housing Society, Multi storied Building, Residential Colony, or a similar body registered with the State Government under the Himachal Pradesh Societies Registration Act, 2006 or under the Societies Registration Act, 1860;".*

3. Amendment of para 1.3 of the Principal Code, 2009.—In para 1.3 of the Principal Code, at the end of sub-para 1.3.1.1, for the sign " . " , the sign " : " shall be substituted and thereafter, the following proviso shall be inserted, namely:—

"*Provided that the Commission may incorporate/amend the provisions of the Code to align them with the rules framed by the Ministry of Power, Govt. of India, without recommendations of the Supply Code Review Panel*.".

4. Amendment of para 2.1. In para 2.1.—of the Principal Code, in sub-para 2.1.6.1(A)—

(i) the words "or joint dedicated feeder" shall be omitted.; and

(ii) for the existing table appearing under clause (a) of sub-para 2.1.6.1(A), the following table shall be substituted, namely:—

"

Sl. No.	*Standard Supply Voltage*	*Maximum Connected Load*		*Maximum Contract Demand*	
		Common Feeder	*Dedicated Feeder*	*Common Feeder*	*Dedicated Feeder*
1.	*LT Supply Voltage (for supplies not involving special category loads).*				
	i) *Single, 230 Volt*	*≤15 kW*	-	*≤15kVA*	-
	ii) *Three Phase, 0.4kV*	*50 kW* (Sum total of individual connections).	*50 kW*	*50 kVA* (Sum total of individual connection).	*50 kVA*
2.	*Three Phase 11kV on Dog/equivalent conductor (for supplies not involving special category loads).*	*7 MW* (Sum total of individual connections).	*7 MW*	*5 MVA* (Sum total of individual connections).	*5 MVA*
3.	*Three Phase 22kV on Dog /equivalent conductor (for supplies not involving special category loads).*	*14 MW* (Sum total of individual connections).	*14 MW*	*10 MVA* (Sum total of individual connections).	*10 MVA*
4.	*Three Phase 33kV on Wolf/equivalent conductor.*	*21 MW* (Sum total of individual connections).	*21 MW*	*20 MVA* (Sum total of individual connections).	*20 MVA*
5.	*Three Phase 66kV on Panther/equivalent conductor.*	*40 MW* (Sum total of individual connections).	*40 MW*	*40 MVA* (Sum total of individual connections).	*40 MVA*
6.	*Three Phase 132 kV on Panther/equivalent conductor.*	*95 MW* (Sum total of individual connections).	*95 MW*	*95 MVA* (Sum total of individual connections).	*95 MVA*
7.	*Three Phase 220 KV on Zebra/equivalent conductor.*	*No limits*			

Provided further that for Domestic Category Consumers, as defined in the Tariff Orders of Distribution Licensee for the corresponding year, the maximum connected load shall be 20kW at 230 Volt instead of 15kW at 230 Volt.";

(iii) for clause (ii) of the first proviso to sub-para 2.1.6.1(A)(a), the following clause shall be substituted, namely:—

"(ii) the total quantum of connected load in respect of special category loads does not exceed 750 kW;";

(iv) after 4th proviso to sub-para 2.1.6.1(A)(a), the following new proviso shall be inserted, namely:—

"*Provided further that where an existing consumer, on 01-04-2025, is already availing supply at a voltage lower than the standard supply voltage as per the table specified above in clause (a) of sub-para2.1.6.1(A), the consumer shall have the option to switch to the relevant standard supply voltage, if such standard supply voltage has been made available to him by the licensee or to continue availing supply at such lower voltage by paying lower voltage supply surcharge (LVSS) in accordance with the relevant Tariff Order upto 01-04-2026, and thereafter by paying monthly incremental charges on compounding basis @ 0.33% of the Energy Charges, in addition to the LVSS. If such consumer does not exercise option to switch over to the relevant standard supply voltage on or before 01-03-2027, then, after serving a 30 days notice to the consumer, the licensee shall proceed for permanent disconnection as per Para 7.1:*

Provided further that in case of common feeder, the name of feeder from where, the load to the consumer has been proposed to be released shall be recorded in the consumer database alongwith details of the existing consumers/PAC Commitment with their connected load and contract demand so as to adhere to the limit of connected load and contract demand for respective supply voltage as indicated above. Licensee shall maintain the proper record of such common feeders having number of consumers and their connected load/contract demand, PAC issued to the consumers and reduction of connected load/ contract demand:

Provided further that where the connected load for single part consumers or contract demand for two part consumers exceeds the relevant ceiling limit specified in clause (a) of sub-para 2.1.6.1(A), the appropriate higher voltage at which such limits can be adhered to, shall be considered as standard supply voltage and there shall be no minimum limits for supply of power at a particular voltage.";

(v) after clause (b) of sub-para 2.1.6.1(A), the following Explanation shall be inserted, namely:—

"***Explanation.—****For the purposes of this sub-para, 'Dedicated feeder' means the electric supply line emanating from the secondary voltage of the sub-station of the licensee through which electricity is, or is intended to be, supplied to a single consumer.";*

(vi) the existing para 2.1.6.1(B) shall be omitted.;

(vii) for clause (iii) of the sub-para 2.1.6.1(C), the following shall be substituted, namely:—

"*(iii) Where the connected load or contract demand is to be enhanced, the standard supply voltage under sub-para 2.1.6.1 (A) shall be re-determined as per the provisions under the said para based on enhanced connected load and enhanced contract demand.*";

(viii) for the "Explanation" appearing at the end of sub-para 2.1.6.1(C), the following Explanation shall be substituted, namely:—

"*Explanation.—For the purposes of sub-para 2.1.6.1(A), "special category loads" means furnace loads and mass induction heating loads and shall also include any other load as the Commission may, after taking into consideration electrical characteristics and its impact on the distribution system, by order, declare it to be a special category load.*";

(ix) the existing sub-para 2.1.6.2 shall be omitted; and

(x) in the sub-para 2.1.6.3, for the figures and signs "2.1.6.2", the figures and signs "2.1.6.1(A)" shall be substituted.

5. Amendment of para 3.1.—In para 3.1 of the Principal Code—

(i) in sub-para 3.1.4, in the table, in the last item, for the figures "60", the figures "45" shall be substituted;

(ii) insub-para 3.1.6, for clause(a), the following clause shall be substituted, namely:—

"(a) where no extension of distribution mains or commissioning of new sub-station is required for effecting such supply— (i) within three (3) days in metropolitan areas, (ii) within seven (7) days in other urban/municipal areas, (iii) within fifteen (15) days in rural areas, and (iv) within 30 days in other rural areas having hilly terrain;";

(iii) in sub-para 3.1.6, in clause (b), in the table, in the last item, for the figures "120", the figures "90" shall be substituted; and

(iv) in sub-para 3.1.6, after clause (d), the following Explanation shall be added, namely:—

"Explanation.—For the purpose of this sub-para 3.1.6, all areas excluding areas covered under sub-paras 3.1.6 (a) (i) and 3.1.6 (a) (ii) having height above 1000m from Mean Sea Level shall be considered as hilly areas/terrain.".

6. Insertion of new-paras 3.1A and 3.1B.—after para 3.1 of the Principal Code, the following new paras 3.1A and 3.1B shall be inserted, namely:—

"3.1A Special provisions for release of connection(s) to the consumers residing under Resident Welfare Association

(A) The provisions contained in regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012. shall be applicable with regard to making arrangements for

release of connection(s) to the consumers residing under Resident Welfare Association (RWA). The developer/Association shall also provide suitable land / space in the vicinity of such residential complex for Sub-station for providing supply;

(B) After compliance of the provisions of sub-para (A) above, the following provisions shall apply for release of connection(s), namely:—

(a) Within the area covered under an Association, the distribution licensee shall provide either a single point connection for the Association or individual connections for each and every owner, on the basis of choice of the majority of the house or flat owners in such Association and the choice shall be ascertained by means of a transparent ballot to be held by the distribution licensee:

Provided that if more than fifty percent of the owners prefer individual connection then individual connection shall be given to each owner;

(b) the metering, billing and collection shall be done separately for—

(i) individual electricity consumption sourced from the distribution licensee;
(ii) individual consumption of backup power supplied by the Association; and
(iii) electricity consumption for common area of such Association sourced from the distribution license;

(c) In the case of a single point connection, the Association shall be responsible for metering, billing, and collection and for individual connections, these responsibilities shall vest with the distribution licensee;

(d) In the case of a single point connection,—

(i) the charges deducted through pre-payment meters or bills raised by the Association for individual electricity consumption shall be on no-profit-no-loss basis;
(ii) the distribution licensee's tariff for single point connection to Associations shall not exceed the average billing rate for low tension domestic category;

(iii) the total billing done by Association for the electricity supplied by the distribution licensee shall not exceed the overall tariff paid to the distribution licensee; and

(iv) an additional amount as specified/fixed *by the Commission may be charged towards the sub-distribution network cost incurred for providing electricity up to the premises of the individual consumer."*

(C) In case of any conflict between the provisions of sub-para(A) and sub-para(B), the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 shall prevail in respect of the matters concerning the arrangements/infrastructure to be provided and for the purpose of giving connection(s) and their metering and billing the provisions contained in sub-para B) above shall prevail.

3.1B *On the request of an Association or an owner of the flat or house in an Association or any other consumer, the distribution licensee shall provide a separate connection for supply of electricity for Electric Vehicle charging system as per relevant applicable provisions*. "

7. Amendment of para 3.3. — In para 3.3 of the Principal Code, in sub-para 3.3.1, in clause (i), for the words, brackets and figure "three (3) working days", the words, brackets and figure "forty eight (48) hours" shall be substituted.

8. Amendment of para 3.5.—In para 3.5 of the Principal Code, after sub-para 3.5.1, the following proviso shall be inserted, namely:—

"*Provided that no test report shall be required in cases of transfer of title/ change of name of a deceased consumer. The Licensee shall devise, and make available on its website, a simple application/agreement format for this purpose within 30 days of its publication in the official gazette.*"

9. Amendment of para 3.10.— In para 3.10 of the Principal Code, in sub-para 3.10.1, after clause (e), the following new clause (f) shall be added, namely:—

"*(f) Non compliance of distribution performance standards specified under this chapter shall attract the provisions of Schedule appended to the Himachal Pradesh Electricity Regulatory Commission (Distribution Performance Standards) Regulation, 2010 as amended from time to time.*"

10. Amendment of para 4.4.— In para 4.4 of the Principal Code—

(i) after sub-para 4.4.2(a), the following proviso shall be inserted, namely:—

"*Provided that in case of complaint by a consumer regarding meter reading not being commensurate with his consumption of electricity, distribution licensee shall install an additional meterwithin five days from the date of receipt of the complaint, to verify the consumption, for a minimum period of three months."; and*

(ii) in sub-para 4.4.8, after clause(ii), of the following proviso shall be inserted, namely:—

"*Provided that in case of meters where error in recorded energy is due to wrong CT/PT connections or inputs there from, wrong multiplication factor, calculation mistakes etc. the accounts of consumer will also be overhauled in terms of sub-para 4.4.8 (ii) above.".*

11. Amendment of para 5.2.—In para 5.2 of the Principal Code, 2009—

(i) in sub-para 5.2.1.4, for the words "every month", the words "a day" shall be substituted, and thereafter, the following sub-paras shall be inserted, namely:—

"5.2.1.4.1 After the installation of smart meters, no penalty shall be imposed on the consumer, based on the maximum demand recorded by the smart meter, for the period before the installation date.

5.2.1.4.2 In case maximum demand recorded by the smart meter exceeds the Sanctioned Load in a month, the bill, for that billing cycle, shall be calculated based on the actual recorded maximum demand and consumers shall be informed of this change in calculation through Short Message Service or mobile application:

Provided that the revision of the Sanctioned Load, if any, based on the actual recorded maximum demand shall be as under:—

(a) in case of increase in recorded maximum demand, the lowest of the monthly maximum demand, where the recorded maximum demand has exceeded the sanctioned load limit at least three times during a financial year, shall be considered as the revised Sanctioned Load, and the same shall be automatically reset from the billing cycle in next financial year. The consumers shall be informed of this revision in Sanctioned Load through Short Message Service or mobile application. The applicable charges for such additional contract demand/sanctioned load shall be recovered as per the relevant applicable Regulations; and

(b) in case of reduction of maximum demand, the revision of sanctioned load shall be done as per the relevant applicable Regulations."; and

(ii) after sub-para 5.2.9.2, the following new sub-para 5.2.9.2A shall be inserted, namely:—

"*5.2.9.2A. In case consumers covered under single part tariff is provided with Smart Meters and are not covered under pre-payment mode, the bills shall be sent through e-mail and intimation in this regard shall also be sent through SMS or through any other electronic mode. The bills sent through e-mail, for which intimation has also been sent through SMS, to such consumers shall be considered as delivered.*".

12. Amendment of para 7.1.—In para 7.1 of the Principal Code, 2009—

(i) in sub-para 7.1.1, after clause (h), the following new clause (i) shall be inserted, namely:—

"(i) *in case of default at the end of the consumer to switch over to standard supply voltage {clause (a) of sub-para 2.1.6.1(A)}.*"; and

(ii) in sub-para 7.1.2, after 2nd proviso, the following new proviso shall be inserted, namely:—

"*Provided further that in case of Smart Pre-payment meters the disconnection of the consumer shall not be considered as temporary disconnection if the balance in consumer's account is exhausted and supply is restored on recharge by the consumer within a period of seven days from the date of exhaustion of its balance amount. The reconnection charges shall not be leviable and the fourth proviso below shall not be applicable in the instant case. However, this shall not be applicable in case disconnection is done as per provisions of clause (b) to (i) of sub-para 7.1.1, where the connection shall be disconnected through system as well as physically:*".

By order of the Commission,

Sd/-
Secretary.

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

Vidyut Aayog Bhawan, Block No. 37, SDA Complex, Kasumpti, Shimla-171009

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NOTIFICATION

Dated, the 25th March,2025

No. HPERC/Secy/610A/Vol.VIII/2020-3697-3705.—In exercise of power vested under the provisions of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 as amended from time to time, the H.P. Electricity Regulatory Commission hereby nominate Sh. Rakesh Kumar Sharma **(D.O.B-13.01.1966)** as the Independent Member of the Forum for Redressal of Grievances of HPSEBL Consumers (CGRF), located at Kasumpati, Shimla.

As per the provisions of the aforesaid Regulations, the nomination of Sh. Rakesh Kumar Sharma will be for three (3) years from the date on which he takes over as such or until he attains the age of 65 years, whichever is earlier.

The salary and allowances shall be as per the provisions notified under HPERC (Salary and Allowances of the nominated Independent Members of the Forum for Redressal of Grievances of the Consumers) Order, 2013 as amended from time to time

By order of the Commission,

Sd/-
(JITENDER SANJTA), HAS,
Secretary.

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, 13th January, 2025

No. : LEP-E/1/2024.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the **Presiding Judge, Industrial Tribunal**-cum-**Labour Court, Shimla,** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette".**

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/ Orders
1.	Ref. 25/2021	Sh. Manjeet Kumar	Occupier HPL Electric Ltd.	02.08.2024
2.	Ref. 81/2023	Sh. Neeraj Kumar	M/s G4S Secure Solutions	08.08.2024
3.	Ref. 73/2020	Ms. Jaya Sharma	D.B. Corporation Ltd. & Ors.	12.08.2024
4.	App. 14/2023	Sh. Prabhu Prasad	M/s Himalayan Communications	14.08.2024
5.	App. 15/2023	Sh. Devta Prasad	M/s Himalayan Communications	14.08.2024
6.	App. 16/2023	Sh. Suraj Kumar	M/s Himalayan Communications	14.08.2024
7.	Ref. 14/2021	Sh. Anil Kumar	M/s Phoniex Udyog Ltd.	16.08.2024
8.	Ref. 127/2019	Ms. Ranjana Rai	M/s Mediforce Healthcare (P) Ltd.	16.08.2024
9.	Ref. 134/2019	Sh. Subhash Chand	Principal DAV Public School, P/Sahib	17.08.2024
10.	Ref.196/2021	Ms. Munni Devi	M/s Affy Parental Baddi.	20.08.2024
11.	App. 12 of 2023	Sh. Deepak Kumar	The 31 Parallel House, Shimla	21.08.2024
12.	Ref. 78/2018	Smt. Renu	M/s Sri Niwas Gujrat (P) Ltd.	23.08.2024
13.	Ref. 19/2022	Sh. Vicky Kumar	Vidyut Healthcare Krishanpur	27.08.2024
14.	Ref. 62/2023	Sh. Suresh Kumar	M/s Cliff Security Services (P) Ltd.	28.08.2024

By order,

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

Manjeet Kumar Versus F/M Occupier, HPL Energy & Power Ltd.
Reference No. 25/2021

02.08.2024

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

Manager, HR Shri Mahender Kumar, with Sh. Rahul Mahajan & Prateek Kumar, Ld. Csl. for respondent.

The referene under Section 10 (1) of the Industrial Disputes Act, 1947 has been received from the appropriate government vide notification no. 11-2/93(Lab)ID/2021/Solan/Manjeet, dated 20.01.2021 sent by Joint Labour Commissioner for adjudication.

At this stage, parties have informed this Court that they have settled the matter amicably which settlement has been reduced in to writing. Statement of Sh. Mahender Kumar, Manager HR has been recorded separately, who has deposed that he has been authorized by the respondent to make statement vide board resolution Ex. RW-1/B. He also deposed that the parties have entered into settlement as Ex. C-1 and admitted his signature on the same. He further deposed that as per settlement Ex. C-1 cheque bearing no. 413073 of Rs. 1,50,000/- has been handed over to the petitioner by way of his full and final settlement amount and nothing survive in this petition. Similar statement has been made by Sh. J.C. Bhardwaj, AR for the petitioner who also admitted the statement made by the Sh. Mahender Kumar, Manager HR to be correct and has deposed that the award be passed as per settlement Ex. C-1 as nothing else survives in this petition.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. C-1 and the sum of Rs. 1,50,000/- has been paid by the respondent to the petitioner through cheque as full and final settlement amount, thereafter, nothing survive in this petition.

The present reference received from the appropriate government is answered accordingly. Statements of the parties as well as Ex. C-1 shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
02.08.2024

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

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

Reference Number	:	81 of 2023
Instituted on	:	03.06.2023
Decided on	:	08.08.2024

Neeraj Kumar s/o Shri Tara Singh, r/o Village Singhpura, P.O. Bhangani, Tehsil Paonta Sahib, District Sirmaur, H.P. . . *Petitioner*.

Versus

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

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

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

"Whether the termination of the services of Shri Neeraj Kumar s/o Shri Tara Singh, r/o Village Singhpura, P.O. Bhangani, Tehsil Paonta Sahib, District Sirmaur, H.P. and the Prop. M/s G4S Secure Solutions (India), Pvt. Ltd. Maya Plaza, 1st Floor, Dhan Singh Thappa Marg, Near SBI Bank, P.O. Garhi Cantt. Dehradun, Uttrakhand-248003 w.e.f. 07.09.2022 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, past service benefits, and compensation the above aggrieved workman is entitled to from the above management?"

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 07.09.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 8th day of August, 2024.

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

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

Reference Number	:	73 of 2020
Instituted on	:	24.06.2020
Decided on	:	12.08.2024

Jaya Sharma, r/o Gautam Niwas, Near Flower Dale, Chotta Shimla, District Shimla, H.P.
. . Petitioner.

Versus

1. The Managing Director, M/S D.B. Corporation Limited, Plot No. 280, Sarkhej Gandhi Nagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujrat.

2. The Assistant General Manager (HR & Admin), Dainik Bhaskar, Regional Office, Plot No. 11-12, Ground Floor, Dakshin Marg, Sector-25D, Chandigarh, 160036.

3. The State Editor, Dainik Bhaskar Malbrow House, Near DPRO Office, Chotta Shimla-2, H.P. . . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Sh. Virender Chauhan, Adv.

AWARD

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

"Whether the demand raised vide application/ demand notice dated 05.04.2019 (copy enclosed) by Ms. Jaya Sharma, r/o Gautam Niwas, Near Flower Dale, Chotta Shimla, District Shimla, H.P. regarding verbal termination of her services w.e.f. 04.04.2019 after demanding wages and arrear of wages as per recommendations dated 11.11.2011 of the Majithia Wage Board by (1) the Managing Director, M/S D.B. Corporation Limited, Plot No. 280, Sarkhej Gandhi Nagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujrat. (2) the Assistant General Manager (HR & Admin), Dainik Bhaskar, Regional Office, Plot No. 11-12, Ground Floor, Dakshin Marg, Sector-25D, Chandigarh, 160036 (3) the State Editor, Dainik Bhaskar Malbrow House, Near DPRO Office, Chotta Shimla-2, H.P. is legal and justified? If not, what amount of back wages, seniority, past services benefits and compensation the above worker is entitled to from the above employer/ management?"

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

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 04.04.2019 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman has not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 12th day of August, 2024.

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

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

Application Number : 14 of 2023

Instituted on : 13.01.2023

Decided on : 14.08.2024

Prabhu Prasad, s/o Shri Sarju Prasad, r/o Village & P.O. Gughali, District Maharajganj, (UP) . . *Petitioner*.

Versus

M/s Himalaya Communications Pvt. Ltd. Village Katha, Tehsil Baddi, District Solan, H.P. . . *Respondent*.

Application under Section 2-A of the Industrial Disputes Act, 1947 read with Section 151 of CPC.

For the Petitioner : Nemo

For the Respondent : Sh. Prateek Kumar, Adv.

AWARD

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

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the application, it was required of the petitioner to plead and prove on record that the termination of his services without complying with the provisions of the Act and, thus, illegal and unjustified. However, there no evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The application is answered in the aforesaid terms.

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

Announced in the open Court today this 14th day of August, 2024.

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

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

Application Number : 15 of 2023

Instituted on : 13.01.2023

Decided on : 14.08.2024

Devta Prasad s/o Sh. Bhikhari, r/o Village Khasri, P.O. Amava, District Raibarele (UP)
. . *Petitioner*.

Versus

M/s Himalaya Communications Pvt. Ltd. Village Katha, Tehsil Baddi, District Solan, H.P.
. . *Respondent*.

Application under Section 2-A of the Industrial Disputes Act, 1947 read with Section 151 of CPC.

For the Petitioner : Nemo

For the Respondent : Sh. Prateek Kumar, Adv.

AWARD

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

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the application, it was required of the petitioner to plead and prove on record that the termination of his services without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is no evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The application is answered in the aforesaid terms.

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

Announced in the open Court today this 14th day of August, 2024.

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

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

Application Number : 16 of 2023

Instituted on : 13.01.2023

Decided on : 14.08.2024

Suraj Kumar s/o Shri Prabhu Prasad, r/o Village & P.O. Gughali, District Maharajganj, (UP) . . *Petitioner*.

Versus

M/s Himalaya Communications Pvt. Ltd. Village Katha, Tehsil Baddi, District Solan, H.P. . . *Respondent*.

Application under Section 2-A of the Industrial Disputes Act, 1947 read with Section 151 of CPC.

For the Petitioner : Nemo

For the Respondent : Sh. Prateek Kumar, Adv.

AWARD

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

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the application, it was required of the petitioner to plead and prove on record that the termination of his services without complying with the provisions of the Act and, thus, illegal and unjustified. However, there no evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The application is answered in the aforesaid terms.

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

Announced in the open Court today this 14th day of August, 2024.

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

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

Reference No. : 14 of 2021

Instituted on : 19.01.2021

Decided on : 16.08.2024

Anil Kumar s/o Shri Ram Chander, r/o Village Lehi, P.O. Burma Papri, Tehsil Nahan, District Sirmaur, H.P. . . *Petitioner*.

Versus

The Occupier/Factory Manager M/s Phoniex Udyog Ltd., Village & P.O. Moginand, Nahan Road, Kala Amb, District Sirmaur, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri R.K. Khidtta, Advocate

For the respondent : Ex-parte

AWARD

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

"**Whether termination of services of Shri Anil Kumar s/o Shri Ram Chander, r/o Village Lehi, P.O. Burma Papri, Tehsil Nahan, District Sirmaur, H.P. *w.e.f.* 18.06.2020 by the Occupier, M/s Phoniex Udyog Ltd., Village & P.O. Moginand, Nahan Road, Kala Amb, District Sirmaur, H.P. without serving any notice, is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above worker is entitled to from the above employer/ management?"**

2. The case as set up by the petitioner in his statement of claim is that he was engaged as beldar by the respondent company *w.e.f.* 01.11.2018 and worked as such till 18.06.2020 continuously. The services of the petitioner were orally terminated on 18.06.2020 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred

as the Act) as neither any notice has been issued nor compensation in lieu of notice has been paid to the petitioner. Petitioner was asked to perform over-time duty for which the petitioner refused as his father and wife were ill and were admitted in the hospital, but the request of the petitioner was not considered and his services were terminated without conducting any enquiry and without complying with the mandatory provisions of the Act. After termination of the services of the petitioner, he was not allowed by the respondent company to perform his duties. The respondent company has also not paid salary to the petitioner for the months of April to June, 2020. Petitioner has completed 240 days in each calendar year as such the termination of the services is totally illegal, unjustified. The respondent has retained junior person to petitioner, who are still working in the respondent company as such the respondent has violated the principles of "last come first go". The petitioner has averred that he is un-employed w.e.f. 18.06.2020 and is not gainfully employed anywhere. Petitioner claimed that he is meeting his day to day expenses by borrowing money from his relatives and friends. The petitioner has not only prayed for quashing his termination order dated 18.06.2020, but also for back-wages and other service benefits such as seniority, continuity in service and also the salary for the months of April to June, 2020. Apart from this, the petitioner has also claimed ` 50,000/- as litigation cost.

3. Notice of this claim petition was sent to the respondent, but despite ample opportunities respondent failed to file reply and right to file reply was closed *vide* order dated 24.07.2023 and thereafter the respondent was proceeded against ex-parte *vide* order dated 27.03.2024.

4. The petitioner thereafter led evidence and examined himself as PW-1, however, since the respondent was *ex-parte*, neither he has been cross-examined nor any evidence of the respondent is on record.

5. The petitioner while appearing into the witness box as PW-1 has deposed that he was engaged as beldar by the respondent company w.e.f. 01.11.2018 and worked as such till 18.06.2020 continuously. His services have been orally terminated by the respondent *w.e.f.* 18.06.2020 without following the mandatory provisions of the Act, as no notice or compensation in lieu of notice was paid to him at the time of his oral termination. His services have been terminated orally despite the fact that he had completed 240 days in each calendar year. Respondent has also not paid wages to him for the months of April to June, 2020. Respondent has engaged new persons. He also depose that he is not gainfully employed anywhere since his termination. He placed on record demand notice Ex. PW-1/A.

6. I have heard the learned counsel for the petitioner and have also gone through the record of this case carefully.

7. The factual matrix of the case is that the petitioner raised an Industrial Disputes for his wrong termination by approaching the Labour-*cum*-conciliation officer. Petitioner has taken the plea that he was engaged as beldar by the respondent on 01.11.2018 and worked continuously till 18.06.2020 on which date his services were terminated orally without assigning any reason and without following the mandatory provisions of the Act, despite the fact that the petitioner had completed 240 working days in the preceding calendar year from the date of his oral termination.

Apart from this petitioner has also alleged gross violation of Section 25-G of the Act. It is the further case of the petitioner that he has also not been paid salary for the months April to June, 2020.

8. Retrenchment under Section 2 (oo) of the Act, is comprehensive enough to include all types of terminations of service, unless the termination falls within any of the exceptional categories mentioned therein. In the instant case, the statement of the petitioner which goes unrebutted would establish on record that he was engaged as beldar by the respondent company *w.e.f.* 01.11.2018 and he worked continuously as such till 18.06.2020. He had completed 240 days in each calendar year, but the respondent has terminated the services of the petitioner orally. No action has been initiated against the petitioner by way of any disciplinary inquiry. Before, terminating the services of the petitioner, it was incumbent upon the respondent to have issued notice as provided in Section 25-F of the Act, which reads as under:

> "*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 for such authority as may be specified by the appropriate Government by notification in the Official Gazette".*

9. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. Coming to the case in hand respondent has not complied with the provisions of Section 25-F of the Act and proceeded to terminate the services of the petitioner orally as such the termination of the petitioner from service *w.e.f.* 18.06.2020 is neither legal nor justified.

10. The second point which arises for consideration in this case is that whether there is any violation of Section 25-G of the ibid Act which reads as under:

> "***25-G. Procedure for retrenchment***.—*Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

11. To invoke this provision, the workman is not required to prove that he had worked for 240 days preceding to the date of his termination, but it is sufficient for him to plead and prove that while terminating his services, the employer violated the rules of "last come first go". The petitioner has not made any averments in the statement of claim and also did not utter a single word while appearing in the witness box that who are the newly engaged persons who were junior to him and when they joined the respondent company. Neither there is any evidence to establish on record that juniors have been retained by the respondent in violation of the provisions of Section 25-G of the Act nor there is anything on record to establish that the respondent has violated the principles of "last come first go". The learned counsel for the petitioner has placed reliance on ***2007, LLR 72 Supreme Court of India, 2017, LLR 153 Rajasthan High Court, 2017, LLR 111 Short Note (code 20) Rajasthan High Court, 2015, LLR 833 Himachal Pradesh High Court,*** . Though this Court has no reason to dis-agree with the law laid down by the Supreme Court Cases and Hon'ble High Court, but coming to the case in hand these judgments are not help to the petitioner as he has failed to prove any violation to Section 25-G & 25-H.

12. The next question which arises for consideration is that the petitioner has claimed salary for the months of April to June, 2020. With the statement of the petitioner it stands established on record that the respondent has not paid wages/salary to the petitioner *w.e.f.* April to June 2020 as such the respondent is liable to pay such salary/wages to the petitioner.

13. Now, the last question which has been raised by the petitioner through this claim petition is that he is not only entitled for reinstatement with seniority and continuity but also for back-wages. The petitioner in his statement of claim as well as in his evidence as PW-1 has deposed that since the date of his oral termination, he is not gainfully employed anywhere. Though, it is settled that the entitlement of any employee to get re-instated does not necessarily and mechanically result in payment of full or partial back-wages which is independent of re-instatement and host of factors like the manner and method of selection and appointment, nature of appointment whether ad-hoc, short term, daily wage, temporary and permanent in character and length of service, which the workman had rendered with the employer, are required to be taken into consideration before passing any order for award of back-wages. This position was reiterated in **Kanpur Electricity Supply C. Ltd. Vs. Shamim Mirza (2009) 1 SCC 20** as well as in **Ritu Marbles Vs. Prabhankant Shukla (2010) 2 SCC 70**.

14. In the case in hand the statement of the petitioner goes unrebutted. The petitioner has shown that he was not gainfully employed anywhere. In **Kendriya Vidyalaya Sangathan Versus S.C. Sharma (2005) SCC 363**, the Hon'ble Apex Court held that the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on the employee to prove that. The Hon'ble Apex Court in National Gandhi Musuem Vs. Sudhir Sharma (2-21) 12 SCC 439 has considered this aspect and held as under:

> **"Whether an employee after dismissal from service was gainfully employed is something, which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden, however, in what manner the employee can discharge the said burden will depend upon peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer."**

15. In view of the above judgments, since the petitioner has averred in the statement of claim and also deposed on oath by way of evidence as PW-1 that he was not gainfully employed after his termination petitioner is also entitled for full back-wages.

16. In view of my aforesaid discussion, the claim filed by the petitioner succeeds and is hereby allowed. The respondent company is directed to re-engage the petitioner in service from 18.06.2020 with seniority and continuity along-with full back-wages including wages for the month of April and June, 2018. The payment of back-wages shall be payable within a period of two months from the date of announcement of this award failing which the same shall carry interest @ 9% per annum. The reference is answered in the aforesaid terms.

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

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

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

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

Reference No : 127 of 2019

Instituted on : 23.08.2019

Decided on : 16.08.2024

Ranjana Rai, r/o Jawalapur Nihalgarh, Paonta Sahib, District Sirmour, H.P. . . *Petitioner.*

Versus

1. The Factory Manager, M/s Mediforce Healthcare Pvt. Ltd., Unit-II, Plot No. 46, Industrial Area Gondpur, Tehsil Paonta Sahib, District Sirmour, H.P. (Principal Employer).

2. Neeraj Verma /The contractor, Industrial Area Gondpur, Paonta Sahib, Himachal Pradesh.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Adv.

For the respondent No. 1 : Shri Abhyendra Gupta, Adv.

For the respondent No. 2 : Ex-Parte

AWARD

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

"**Whether termination of the services of Smt. Ranjana Rai, r/o Jawalapur Nihalgarh, Paonta Sahib, District Sirmour, H.P. *w.e.f.* 01.09.2018 by the Factory Manager, M/s Mediforce Healthcare Pvt. Ltd., Unit-II, Plot No. 46, Industrial Area Gondpur, Tehsil Paonta Sahib, District Sirmour, H.P. (Principal Employer) (ii) Sh. Neeraj Verma, Industrial Area Gondpur, Tehsil Paonta Sahib, District Sirmour, H.P. (Contractor) allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers/ management?"**

2. The case of the petitioner, as it emerges from the statement of claim is that the petitioner/ claimant was initially engaged as packaging worker by the respondent no. 2 in the company *w.e.f.* November 2016 and she worked as such till 01.09.2018. The services of the petitioner have been orally terminated by the respondent no. 1 *w.e.f.* 01.09.2018 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act), as neither any notice has been served nor any compensation in lieu thereof has been paid to the petitioner. Petitioner is a workman as define under the Act. Petitioner had taken 15 days leave due to paralytic attack of her mother. The condition of her mother did not improve and petitioner took her to PGI Hospital at Lucknow. Petitioner had informed about this fact to respondent no. 1 and also to the security guard of the company, but when petitioner came to join her services after one month she was allowed to work only for four days and on 5th day, her services were terminated *i.e.* on 01.09.2018, without conducting any inquiry and without the compliance of mandatory provisions of the Act. The petitioner was not allowed to perform her duties by respondent no. 1. Petitioner visited the office of the respondent no. 1 several times and requested to re-engagement her, but respondent no. 1 did not pay any heed to the requests of the petitioner. Petitioner was forced to raise demand notice before the Labour-cum-Conciliation Officer against her illegal termination, which was duly served on respondent no. 1, who also filed the reply to said demand notice. Due to adamant attitude of respondent no. 1, conciliation proceeding failed. Respondent no. 1 has terminated the services of the petitioner in utter violation of provisions of the Act. The termination of the services of the petitioner in the aforesaid manner, tantamount to unfair labour practice. Petitioner has also been harassed mentally by the respondent no. 1, for which the company is liable to pay damages to the tune of Rs. 5,00,000/-.

3. Petitioner through this claim petition has prayed that the termination of her services *w.e.f.* 01.09.2018 be quashed and set aside and that the respondents who have violated the principles of "Last Come, First Go" be directed to reinstate her with seniority and continuity along-with full back wages.

4. Notice of this petition has been sent to the respondents in pursuance thereof respondent No.1 filed reply in which it took the plea that the petitioner was employed through contractor, as such she cannot claim any benefits from respondent no 1. It is averred that the grievance of the petitioner lies with the contractor and not with respondent no. 1. The termination of the petitioner took place on 01.09.2018 and she has come to this Court in the year 2021, which shows that her claim is not bonafide. It was reiterated by the respondent no. 1 that since petitioner was engaged through contractor, she cannot raise any claim against the respondent no. 1 and prayed that the claim petition be dismissed.

5. No rejoinder was filed.

6. It is pertinent to mention here that notice was served on respondent no. 2, however, respondent no. 2 did not appear before this Court despite service, as such respondent no. 2 was proceeded against *ex-parte vide* order dated 01.09.2022.

7. On the pleadings, this Court formulated the following issues on 22.09.2022.

1. Whether the termination of services of the petitioner *w.e.f.* 01.09.2018 by the respondent allegedly, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . *OPP*.

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

3. Relief

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

9. I have heard the Ld. Counsel for the petitioner and Ld. Counsel for respondent no.1 and also scrutinize the record of the case carefully.

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

Issue No. 1 : No.

Issue No. 2 : No.

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

REASONS FOR FINDINGS

Issue No.1

11. So far as issue no. 1 is concerned, the onus to prove the same is on the petitioner. Petitioner has set-up a claim that she was engaged as a packaging worker by the respondent no. 2 in the respondent no 1 company *w.e.f.* November 2016 and she worked as such till 01.09.2018 continuously and thereafter her services were orally terminated by the respondent no. 1 *w.e.f.* 01.09.2018 without following the mandatory provisions of law.

12. On the other hand, the stand taken by the respondent no. 1 is that the respondent no.1 is not a principle employer and the grievances of the petitioner are only against the contractor. She was not engaged by the respondent no. 1 nor respondent no. 1 has terminated the services of the petitioner.

13. Now coming to the evidence which is on record. The petitioner (Ranjana Rai) has appeared in the witness box as PW-1 and led her evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition.

14. During cross-examination, she deposed that she was engaged/ deputed by the contractor with company. She deposed that she had worked under the direction and control of the respondent company and her ESI and EPF was also deducted by the company. She used to receive salary in cash sometimes from the contractor and sometimes from the officials of the company. She admitted that neither appointment letter nor any I.D. Card has been issued to her by respondent no. 1.

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

16. Respondent no.1 has examined Shri Balak Ram, as RW-1. He deposed that he is authorized by respondent no. 1 vide Ex. RW-1/A to give evidence in this reference. He led his evidence by way of affidavit as Ex. RW-1/B, which is just a reproduction of the averments as made in the reply.

17. During cross-examination, he admitted that the petitioner was working in respondent no. 1 company, however he denied that she was paid salary by the respondent no. 1. He deposed that company had entered into agreement with the contractor that he would provide employees to the company. He admitted that such agreement has not placed on record. He denied that the petitioner use to work under her supervision.

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

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

20. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of her illegal termination, which as per the claim of the petitioner took place in 01.09.2018. There is not even single averments made by the petitioner either in her application/ claim or in the evidence which is led by way of affidavit as Ex. PW-1/A that she had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of her illegal termination.

21. So far as the case of the petitioner is concerned, it is clear position on record from the pleadings of the petitioner and her statement that she was engaged by the respondent no. 2 in the Month of November, 2016. The petitioner has also admitted this fact in her cross-examination that she was engaged/ deputed by the contractor with the respondent no. 1. She has also admitted that neither any appointment letter nor any I.D. Card was issued to her by respondent company. The petitioner though has claimed that she was engaged by the respondent no. 1 in the company w.e.f. November, 2016 and she worked up till 01.09.2018 continuously, but petitioner has not bothered to summon any record of the respondent no. 1 to establish that she was ever paid salary by the respondent no. 1 or that her ESI and EPF was deducted by respondent no. 1. In absence of such proof, the statement of the petitioner is not enough to establish on record that she was engaged by the respondent no. 1 and had completed 240 days in a period of twelve calendar months prior to date of her termination. The evidence on record *viz-a-viz* the statement of the petitioner clearly establish that she was engaged by respondent no. 2 who deputed her with respondent no. 1.

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

> ***"25-G. Procedure for retrenchment.—****Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

23. It is claimed by the petitioner that after termination of her services, junior persons to her were re-engaged by the respondent, but neither any list of the junior persons has been placed on record nor the petitioner has made any averment that which junior person was retained by the respondent no. 1. Moreover, the petitioner has failed to establish employee-employer relationship between the petitioner and the respondent no. 1, as she cannot drive any benefit under Section 25-G of the Act against respondent no 1. The learned counsel for the petitioner has placed reliance of ***2007, LLR 72 Supreme Court of India, 2017, LLR 153 Rajasthan High Court, 2017, LLR 111 Short Note (code 20) Rajasthan High Court, 2015, LLR 833 Himachal Pradesh High Court,*** , though this Court has no reason to dis-agree with the law laid down by the Supreme Court Cases and Hon'ble High Court, but coming to the case in hand these judgments are not help to the petitioner as she has failed to prove any violation to Sections 25-F, 25-G, 25-H and 25-N. In view of the above discussion issued no. 1 decided against the petitioner.

Issue No. 2

24. Now coming to issue no. 2, it was argued by the learned counsel for the respondent that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from delay and laches, which disentitles her to the relief(s) she had prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was *inter-alia* held:

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

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter. In view of the above discussion, it cannot be held that the petition is neither competent nor maintainable as such issue no. 2 decided against the respondent.

Relief

26. For all the foregoing reasons discussed hereinabove *supra,* the claim filed by the petitioner fails and is hereby dismissed. Let a copy of this award be communicated to the

appropriate Government for publication in the official gazette. File, after due completion, be consigned to records.

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

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

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

Reference No : 134 of 2019

Instituted on : 17.09.2019

Decided on : 17.08.2024

Subhash Chand, s/o Sh. Pritam Singh, r/o Village Kishanpura, P.O. Jamniwala, Tehsil Paonta Sahib, District Sirmour, H.P. . . *Petitioner*.

Versus

Principal D.A.V. Public School Paonta Sahib, Tehsil Paonta, District Sirmour, H.P.
. . *Respondent* .

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Susheel K. Parihar, Adv.

For the respondents : Shri R.K. Khidtta, Adv.

AWARD

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

"**Whether the termination of the services of Sh. Subhash Chand, s/o Shri Pritam Singh, R/O Village Kishanpura, P.O. Jamniwala, Tehsil Paonta Sahib, District Sirmour, H.P. by the Principal, D.A.V. Public School, Paonta Sahib, District Sirmour, H.P. *w.e.f.* 03.10.2018 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer?"**

2. The case of the petitioner as emerges from the statement of claim is that the petitioner was appointed as Driver with the respondent in May, 2014 on monthly salary of Rs. 11,880/- and

he worked as such up till 31.07.2018 without any break. During this period the work and conduct of the petitioner remained satisfactory and up to the mark. The respondent without any prior notice and without any salary terminated the services of the petitioner without affording him any opportunity of being heard, which is in violation to the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). Petitioner raised the industrial dispute before the Labour-cum-conciliation Officer, but the same could not be resolved and the matter was referred to this Court for adjudication. The petitioner has claimed that his salary was paid by the respondent till July, 2018 and thereafter respondent retained the salary of the petitioner and in the month of October, 2018, the services of the petitioner were terminated by the respondent without following the mandatory provisions of the Act. Petitioner has claimed through this petition that respondent be directed to re-engage the petitioner with all the consequential benefits.

3. Notice of this claim was sent to the respondent, in pursuance thereof respondent contested the claim by filing reply. Apart from taking preliminary objections of maintainability, gross misuse of the provisions of the Act, petitioner has not approached this Court with clean hand, cause of action , petitioner was a temporary/ casual worker and was performing temporary work in the school. Petitioner was found stealing petrol from the vehicle of the respondent number of times and he also committed mistakes, which were admitted by him in writing. Due to illegal acts of the petitioner the respondent school has lost the faith in the petitioner.

4. On merits, it was submitted that the petitioner was working as casual worker since June, 2014 and he left the job on account of his personal family problem on 25.04.2015 by tendering written resignation in his own hand to the respondent. After sometime the petitioner again requested the respondent to re-engage him on casual basis and the petitioner was engaged afresh on causal basis in the month of June, 2015. Petitioner was again found short of his duty and on inquiry it was found that the petitioner was misappropriating petrol and diesel from the vehicle of the respondent school. The act of the petitioner was also seen by one of the employee namely Sh. Shiv Saran who reported the matter to the principal in writing and petitioner himself admitted his mistake in writing *vide* letter dated 30.09.2018. Services of the petitioner were never terminated by the respondent, but petitioner himself left the job on 01.10.2018 without any prior intimation to the respondent. Respondent waited for few days and tried to contact the petitioner, but his phone was found switched off. In view of urgency of driver in the school, the management employed a driver through outsource agency as per the guidelines of D.A.V. College Managing Committee. Respondent claimed that they have paid dues and admissible salary to the petitioner and prayed for the dismissal of the claim petition.

5. Petitioner filed rejoinder in which he denied the preliminary objections as taken in the reply. It was categorically denied by the petitioner that he had tendered his resignation and claimed that the documents enclosed with the reply are forged. Petitioner further claimed that the respondent in order to adjust his nearer and dear terminated the services of the petitioner on 03.10.2018. On the next day *i.e.* 04.10.2018, petitioner visited the respondent school for his duties, but he was kept outside the office entire day. It was denied that the petitioner had left job at his own.

6. On the pleadings, this Court formulated the following issues on 24.06.2022.

1. Whether the termination of services of petitioner by respondent *w.e.f.* 03.10.2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified, as alleged? If yes, what relief the petitioner is entitled to? . .*OPP*.

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

3. Relief

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

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

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

Issue No. 1 : Partly yes.

Issue No. 2 : No.

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

REASONS FOR FINDINGS

Issue No.1

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

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

12. During cross-examination he admitted that he was engaged on temporary basis by the respondent initially in the month of May, 2014. He denied that he resigned from services due to his family problems on 25.04.2015 by tendering written resignation. He denied that written resignation has been signed by him. He denied that he had made request to the respondent to re-engage him afresh on the same post. He denied that he was reengaged in the month of June, 2015. He also denied that Sh. Shiv Saran had made written complaint Mark-RX-2 against him regarding stealing of the petrol during duty time. He also denied that *vide* letter Mark-RX-3 he had accepted his mistake. He also denied that he left the job *w.e.f.* 01.10.2018. Self stated that his services were orally terminated by the Principal. He showed ignorance that the school management has decided to engage the driver on outsource basis. He also denied that he is gainfully employed and earning Rs. 25,000/- per month.

13. Petitioner also examined Sh. Shiv Saran as PW-2, who has stepped into the witness box as PW-2, he led his evidence by way of affidavit Ex. PW-2/A. He deposed that he was working with DAV Public School as Security Guard since 2015 and petitioner was also working as driver with the respondent who was appointed one year prior to him. He deposed that act and conduct of the petitioner always remained good, he was respectful towards the staff as well as other people and there was no complaint against him. The applicant/ petitioner remained in services without any break till 31.07.2018 and the services of the applicant were terminated by the principal without any reason, in order to adjust his near and dear one. Thereafter, the principal has engaged Sh. Supa Ram as driver in place of Subhash. The principal was involved in a case of fraud and FIR under Section 420 IPC for conducting the open exam was also registered against the principal. During cross-examination, he deposed that he is working as Security Guard in M/s Cipla Company and stated that he worked with the respondent as Security Guard till 2020. There were 50-55 teachers, Mali and housekeeping persons who were working with the respondent. He deposed that he was marking

the attendance of the petitioner. The petitioner was employee of the Principle and not of the contractor. He admitted that he does not know the reason why the services of the petitioner were terminated. He admitted that Sh. Supa Ram has been engaged through the contractor. He denied that the allegations of stealing petrol were also levelled against the petitioner.

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

15. In rebuttal, the respondent has examined Ms. Shalini Kant Thakur, as RW-1, who also led her evidence by way of affidavit Ex. RW-1/A, which is reproduction of the averments as made in the reply. She also produce on record letter dated 25.04.2015 Ex. RW-1/B, letter dated 15.09.2018 Ex. RW-1/C, letter dated 30.09.2018 Ex. RW-1/D and photocopy of the recruitment of Class-D employees in respondent school Ex. RW-1/E.

16. During cross-examination, she admitted that the petitioner was engaged as Driver by the respondent school *w.e.f.* May, 2014. Self stated that he was engaged on temporary basis. She denied that the petitioner had worked till 31.07.2018. She admitted that she was not posted as Principal of respondent school for the period from May, 2014 to 31.07.2018. She denied that Subhash Chand never made pardon through letter Ex. RW-1/B to the management. She denied that the documents Ex. RW-1/B to Ex. RW-1/D were falsely prepared by the management. She deposed that she cannot say without going through the record that in which year, month and time petitioner had stolen petrol from the vehicle of the respondent. She admitted that no inquiry was initiated against the petitioner. Self stated that the petitioner admitted his guilt in writing and abandoned the job at his own. She admitted that during that period Sh. V.K. Lawania was the principal of the school. She showed ignorance that FIR has been registered against the principal under Section 420.

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

18. Now, coming to the case as put up by the respondent, respondent has taken the plea that the petitioner was engaged as casual worker since June, 2014 and left the job on account of his personal family problem on 25.04.2015 by tendering resignation in his own hand to the respondent and after sometimes petitioner in the month of June 2015made arequest that he be re-engaged afresh on causal basis which request was accepted by the respondent. Whereas, the petitioner has taken the plea that he worked continuously with the respondent since June, 2014 till his services were terminated illegally by the respondent on 03.10.2018. Much reliance was placed by the respondent on Ex. RW-1/B, written resignation of the petitioner. Petitioner though has denied that he had tendered his resignation to the Principal, but even if it is considered by this Court that the petitioner had tendered his resignation, there is no office order, salary record, attendance register or any other record of the respondent to established that this resignation of the petitioner was accepted by the respondent management. Simply tendering a resignation would not prove on record that the same was accepted by the respondent and petitioner had left the job, as such, the plea of the petitioner that he was continuously working with the respondent since June, 2014 till his termination has to be accepted.

19. The respondent has taken the stand that petitioner himself abandoned the job after Shiv Saran, one of the Security Guard of the respondent had informed the principal vide Ex. RW-1/C that petitioner had stolen petrol from the official vehicle of the respondent and in this regard the petitioner had tendered apology and thereafter abandoned the job. So far as this plea is concerned Sh. Shiv Saran has been examined by the petitioner as PW-2 and he has not uttered a single word that he had informed in writing to the authority, that the petitioner was involved in theft of petrol from the vehicle of the respondent. Moreover this witness has denied the suggestions put to this witness by the respondent that petitioner had stolen petrol from the vehicle of the respondent. Even letter Ex RW1/C has not been put to this witness. PW-2 has supported the case as

set-up by the petitioner regarding his illegal termination. He has stated that he was marking attendance of the petitioner and petitioner was employee of the respondent.

20. Though, much reliance was placed on Ex. RW-1/D, but through this letter the petitioner has only submitted that if any mistake has been committed by him he would not repeat the same and he would not give any reason to the respondent for further complaint. There is no document to show that the petitioner had left the job at his own nor any inquiry against the petitioner has been conducted to establish that he was involved in any activity which was detrimental to the interest of the respondent management. Respondent management has not produced on record any record of salary to show that the petitioner was not paid any wages from 25.04.2015 till June, 2015. In absence of any such record, it stands established that the petitioner worked continuously with the respondent since June, 2014 till his illegally termination by the respondent.

21. Retrenchment under Section 2 (oo) of the Act, is comprehensive enough to include all types of terminations of service, unless the termination falls within any of the exceptional categories mentioned therein. In the instant case, the statement of the petitioner which goes unrebutted would establish on record that he was engaged as driver by the respondent company *w.e.f* May 2014 and he worked continuously as such till 31 July201, but the respondent has terminated the services of the petitioner orally. No action has been initiated against the petitioner by way of any disciplinary action. Before, terminating the services of the petitioner, it was incumbent upon the respondent to have issued notice as provided in Section 25-F of the Act, which reads as under:

> "*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 for such authority as may be specified by the appropriate Government by notification in the Official Gazette".*

22. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice, but the respondent has not complied with the provisions of Section 25-F of the Act and proceeded to terminate the services of the petitioner orally as such the termination of the petitioner from service *w.e.f.* 3.10.2018 is neither legal nor justified.

23. The second point which arises for consideration in this case is that whether there is any violation of Section 25-G of the ibid Act which reads as under:

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

workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. To invoke this provision, the workman is not required to prove that he had worked for 240 days preceding to the date of his termination, but it is sufficient for him to plead and prove that while terminating his services, the employer violated the rules of "last come first go". Coming to the case in hand it is admitted fact that after services of the petitioner were terminated and one Sh. Supa Ram was engaged as Driver in place of petitioner. The respondent though has taken the plea that Supa Ram was engaged through contractor, but no such contract has been produced. Even if it is assumed that Supa Ram was engaged through contract, then also there is a violation of Section 25-H of the Act. The termination of the petitioner has already been held to be illegal and unjustified and there is also violation of Section 25-G and 25-H of the Act. The provisions of 25-G and 25-H have been given complete go by the respondent, as such it stands established that there is violation of mandatory provisions of the Act.

25. The petitioner has also alleged that he was not paid the salary for the months of August to October, 2018. Though, it stands established on record that the services of the petitioner were termination illegal in violation of mandatory provisions of the Act on 03.10.2018, but petitioner has not worked in the month of October, 2018 as such he would not be entitled to the salary for the month of October, 2018. Petitioner has also not bothered to summon the record of the respondent to establish that he was not paid salary even for the months of August and September, 2018. Since, there is no evidence on record to establish this fact that his salary for the months of August and September was retained by respondent, as such no direction could be issued to the respondent to pay him salary for the months of August and September, 2018. Apart from this the petitioner has also not made any averments either in the pleadings or in the evidence that he was not gainfully employed anywhere after his termination. It is settled that the entitlement of any employee to get re-instated does not necessarily and mechanically result in payment of full or partial back-wages which is independent of re-instatement and host of factors like the manner and method of selection and appointment, nature of appointment whether ad-hoc, short term, daily wage, temporary and permanent in character and length of service, which the workman had rendered with the employer, are required to be taken into consideration before passing any order for award of back-wages. This position was reiterated in **Kanpur Electricity Supply C. Ltd. *Vs.* Shamim Mirza (2009) 1 SCC 20** as well as in **Ritu Marbles Vs. Prabhankant Shukla (2010) 2 SCC 70**.

26. Though the burden to prove that the petitioner was not gainfully employed after his illegal termination was on the petitioner but he has failed to discharge this burden, as such the petitioner is not entitled to any back wages and salary for the months of August and September, 2018. However, since it has been proved on record that there is violation of mandatory provisions of the Act and services of the petitioner were illegally terminated by the respondent, issue no. 1 is decided partly in favour of the petitioner.

Issue No. 2

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

Relief

28. In view of my aforesaid discussion, the claim filed by the petitioner succeeds and is hereby allowed. The respondent school is directed to re-engage the petitioner in service from 03.10.2018 with seniority and continuity but without back wages. The reference is answered in the aforesaid terms.

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

Announced in the open Court today on this 17th day of August, 2024.

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

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

Reference No : 196 of 2021

Instituted on : 27.10.2021

Decided on : 20.08.2024

Munni Devi w/o Shri Ashok Mishra c/o Satish Kumar (President), AITUC, HQ # 7, Phase-II Omaxe Parkwoods, Chakkan Road, Baddi, District Solan, H.P. . . *Petitioner*.

Versus

The Occupier/Factory Manager M/s Affy Parental, Village Gullarwala, Sai Road Baddi, Tehsil Baddi, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C Bhardwaj, AR

For the respondent : Shri Niranjan Verma, Advocate

AWARD

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

"**Whether the termination of the services of Smt. Munni Devi w/o Shri Ashok Mishra c/o Satish Kumar (President), AITUC, HQ # 7, Phase-II Omaxe Parkwoods, Chakkan Road, Baddi, District Solan, HP by the Occupier/Factory Manager M/s Affy Parental, Village Gullarwala, Sai Road Baddi, Tehsil Baddi, District Solan, HP *w.e.f.* 23.10.2018 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of the services, seniority, amount**

of back wages, past service benefits and compensation the above aggrieved worker is entitled to from the above management/employer?"

2. The facts as emerges from the statement of claim are that the petitioner was employed as Security Supervisor/Guard by the respondent management on 01.11.2011 and remained in continuous service till her illegal and oral termination by the respondent. Petitioner was performing her duties sincerely and honestly, but she was restrained from attending the duties and her services were orally terminated without any speaking orders on 23.10.2018. At the time of her illegal termination, she was drawing salary @ ` 9,000/- per month. While terminating the services of the petitioner, the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) were not complied with. It is also alleged that the respondent has retained junior workmen while terminating the services of the petitioner, in utter violation to the provisions of Sections 25-G and 25-H of the Act. The petitioner has claimed that she has completed 240 days in each calendar year, since her engagement and also completed 240 days within a period of twelve calendar months preceding to her illegal termination. Petitioner has alleged that she fell ill on 19.9.2018 and remained under treatment at ESI hospital, Baddi till 25.09.2018. Petitioner was advised rest for seven days, but she could not recover and was granted two weeks rest from 3.10.2018 to 16.10.2018. Petitioner remained on rest as per the advice of the Doctor from 17.10.2018 to 24.10.2018. She was declared fit to join her duties on 25.10.2018. On 26.10.2018, she went to join her duties, but she was told by HR Manager of the respondent that her services have been terminated on 23.10.2018. Petitioner raised demand notice on 11.01.2019, but the respondent management has refused to reinstate her in service as such the matter was referred to this Court. Petitioner has alleged further that since the date of her illegal termination on 23.10.2018 she is not employed anywhere till now. Through this petition, petitioner has prayed that her oral termination by the management on 23.10.2018, be declared as null and void and the respondent management be directed to reinstate her in service with all consequential benefits including full back-wages.

3. Notice of this claim was sent to the respondent, in pursuance thereof respondent contested the claim by filing reply. Respondent took preliminary objections that the petitioner has not come to this Court with clean hands, she has committed serious acts of misconduct, abandonment, maintainability, the petitioner is gainfully employed and the petitioner is guilty of misusing the provisions of the Act.

4. On merits, it was denied that the petitioner was engaged as supervisor/Security Guard by the respondent on 01.11.2011 and she worked as such till her termination. It was also denied that the petitioner was restrained from attending her duties and her services have been terminated without any speaking orders on 23.10.2018. It is averred that the petitioner was engaged as Security Guard on 12.04.2012, but she engaged herself in various misconducts and quarrels for which she had tendered unconditional apologies and ultimately she abandoned her job without intimating the respondent management. Respondent denied empathetically that the services of the petitioner were terminated in violation of the provisions of the Act. It is denied that the petitioner was ill on 19.09.2018 and she was advised rest, as claimed by the petitioner. It was also denied that she came for the duties on 26.10.2018, but she was not allowed to join her duties. It was reiterated that the petitioner has left the job at her own and prayed for the dismissal of the claim.

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

6. On the pleadings, this Court formulated the following issues on 23.01.2023.

1. Whether the termination of services of petitioner by the respondent *w.e.f.* 23.10.2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified, as alleged? If yes, what relief the petitioner is entitled to? . . *OPP*.

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

3. Relief

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

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

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

Issue No. 1 : Yes.

Issue No. 2 : No.

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

REASONS FOR FINDINGS

Issue No.1

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

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

12. During cross-examination, she deposed that now a days, she is not working anywhere. She admitted her signatures in letters Ex. Rx and Ex. RY. She admitted that address mentioned in letter Ex. RZ is her permanent address. She deposed that she does not know that the company had sent letter to her on her permanent address for joining her duties. Self stated that she was residing at Baddi. She admitted that she was appointed as Security Guard on 12.04.2012. She denied that her behavior was not good with her co-workers and she was not obeying the orders of her superiors. She also denied that she has received full & final dues from the company. She denied that despite serving several reminders, she did not join her duty. She also denied that she is working in some other company.

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

14. In rebuttal, the respondent has examined Shri Deepak Kumar, as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also produced on record authority letter Ex. RW-1/B.

15. During cross-examination, he expressed his ignorance that the petitioner had fallen ill on 19.9.2018 and she was admitted in ESI hospital, Baddi. He denied that the petitioner had recovered on 25.09.2018, when fitness certificate was issued to her. He further denied that she came to join her duties on 26.09.2018. He also denied that the petitioner had not left the job. He admitted that the letter was not delivered to the petitioner and it was received back by the respondent. He admitted that petitioner was not charge sheeted for her alleged absence nor any enquiry was conducted. He denied that the signatures of the petitioner were obtained on blank papers and Ex. RX and Ex. RY were prepared and written by the respondent management. He admitted that letters Ex. RX and Ex. RY are not of the hands of the petitioner and further deposed that no complaint made against the petitioner has been placed on record.

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

17. The factual matrix of the case is that the petitioner raised an Industrial Disputes for her wrongful termination by approaching the Labour-cum-conciliation Officer. Petitioner has taken the plea that she was engaged as Security Guard by the respondent on 01.11.2012 and worked continuously till 23.10.2018 on which date her services were terminated orally without assigning any reason and without following the mandatory provisions of the Act, despite the fact that the petitioner had completed 240 working days in preceding calendar year from the date of her oral termination. Apart from this petitioner has also alleged gross violation of Sections 25-G and 25-H of the Act.

18. Retrenchment under Section 2 (oo) of the Act, is comprehensive enough to include all types of terminations of service, unless the termination falls within any of the exceptional categories mentioned therein. In the instant case, a suggestion has been put to the petitioner during cross-examination that she was appointed as Security Guard on 12.04.2012, which suggestion has been admitted by the petitioner, thus it stands established on record that the petitioner was engaged as Security Guard by the respondent company *w.e.f* 12.04.2012. This fact has not been disputed by the respondent in the cross-examination or even in the reply that the petitioner had worked up till 23.10.2018. Therefore, it stands established on record that the petitioner had worked with the respondent company as Security Guard *w.e.f.* 12.04.2012 up till 23.10.2018 continuously. The case of the petitioner is that her services were illegally terminated by the respondent without complying with the provisions of the Act, despite the fact that she had completed more than 240 working days in every calendar year and even in twelve calendar months immediately preceding to her oral termination. Whereas, the respondent on the other hand has taken the plea that she herself has abandoned the job, as she is a quarrelsome lady who used to quarrel with her co-workers. So far as this plea is concerned, there is nothing on record except bald statement of RW-1 to establish that the petitioner had abandoned the job at her own. It has come in the statement of RW-1 that the letter Ex. RZ was never delivered to the petitioner. There is endorsement in the letter that no one in the name of petitioner was residing on this address. Moreover, it is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as ***Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875*** that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as ***State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286***, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job.

19. Mere statement of Shri Deepak Kumar (RW1), alleging that the workman has abandoned the job herself is entirely insufficient to discharge the said onus. Admittedly, no

disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was to be conducted by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the respondent is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employers is not established.

20. The petitioner has claimed that she worked continuously as such till 23.10.2018, but the respondent has terminated the services of the petitioner orally. Before, terminating the services of the petitioner, it was incumbent upon the respondent to have issued notice as provided in Section 25-F of the Act, which reads as under:

> "*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 for such authority as may be specified by the appropriate Government by notification in the Official Gazette".*

21. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless she/he has been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice, but the respondent has not complied with the provisions of Section 25-F of the Act and proceeded to terminate the services of the petitioner orally as such the termination of the petitioner from service *w.e.f.* 23.10.2018 is neither legal nor justified.

22. The other point which arises for consideration in this case is that whether there is any violation of Section 25-G of the ibid Act which reads as under:

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

23. To invoke this provision, the workman is not required to prove that he had worked for 240 days preceding to the date of her termination, but it is sufficient for her to plead and prove that while terminating her services, the employer violated the rules of "last come first go". The petitioner has not made any averments in the statement of claim and also did not utter a single word while appearing in the witness box that who are the newly engaged persons who were junior to her and when they joined the respondent company. Neither there is any evidence to establish on record that juniors have been retained by the respondent in violation of the provisions of Sections 25-G &

25-H of the Act nor there is anything on record to establish that the respondent has violated the principles of "last come first go".

24. Now, the last question which has been raised by the petitioner through this claim petition is that she is not only entitled for reinstatement with seniority and continuity but also for back-wages. The petitioner in her statement of claim as well as in her evidence as PW-1 has deposed that since the date of her oral termination, she is not gainfully employed anywhere. Though, it is settled that the entitlement of any employee to get re-instated does not necessarily and mechanically result in payment of full or partial back-wages which is independent of re-instatement and host of factors like the manner and method of selection and appointment, nature of appointment whether ad-hoc, short term, daily wage, temporary and permanent in character and length of service, which the workman had rendered with the employer, are required to be taken into consideration before passing any order for award of back-wages. This position was reiterated in **Kanpur Electricity Supply C. Ltd. *Vs.* Shamim Mirza (2009) 1 SCC 20** as well as in **Ritu Marbles *Vs.* Prabhankant Shukla (2010) 2 SCC 70**.

25. In the case in hand the petitioner has shown that she was not gainfully employed anywhere. In **Kendriya Vidyalaya Sangathan *Versus* S.C. Sharma (2005) SCC 363**, the Hon'ble Apex Court held that in question of determining the entitlement of a person to back wages, the employee has to show that he was not gainfully employed. The initial burden is on the employee to prove that. The Hon'ble Apex Court in **National Gandhi Musuem Vs. Sudhir Sharma (2-21) 12 SCC 439** has considered this aspect and held as under:

> **"Whether an employee after dismissal from service was gainfully employed is something, which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden, however, in what manner the employee can discharge the said burden will depend upon peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer."**

26. Coming to the case in hand, it stands established that the petitioner was engaged as Security Guard by the respondent on 12.04.2012 and she worked up till 23.10.2018, when her services were illegally terminated by the respondent without complying with the mandatory provisions of the Act. Petitioner has worked for more than six years with the respondent continuously as such in view of the continuous service which has been rendered by the petitioner with the respondent and in view of the fact that petitioner has discharged the initial burden put on her to show that she is not gainfully employed anywhere and this burden has not been rebutted by the respondent it stands established on record that the petitioner is not gainfully employed after her oral termination as such she is also entitled to full back-wages and accordingly issue No.1 is decided in favour of the petitioner.

Issue No. 2

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

Relief

28. In view of my aforesaid discussion, the claim filed by the petitioner succeeds and is hereby allowed. The respondent company is directed to re-engage the petitioner in service from 23.10.2018 with seniority and continuity along-with full back-wages. The payment of back-wages shall be payable within a period of two months from the date of announcement of this award failing which the same shall carry interest @ 9% per annum. The reference is answered in the aforesaid terms.

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

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

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

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

Application No : 12 of 2023

Instituted on : 11.01.2023

Decided on : 21.08.2024

Deepak Kumar s/o late Shri Jiwanoo Ram r/o Jiwanoo Colony, Jiwanoo Niwas Kasumpati Shimla-9, H.P. . . *Petitioner*.

Versus

The 31 Parallel House, Shiwalik Enclave, Shimla Byepass, Panthaghatti, Shimla, H.P, through its General Manager. . . *Respondent*.

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

For the petitioner : Ms. Pooja Sharma, Advocate

For the respondent : ex-parte

AWARD

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

2. The case as set up by the petitioner in the statement of claim is that he was serving as Associate in the office of respondent since April, 2022 under employee ID 5196. He was drawing

salary of ₹10,000/- per month as such he is a workman under the Act. Petitioner claimed that he fell ill and was unable to come to the office as such he sent e-mail on 28.10.2022 to the official of the respondent namely Mr. Ashwani, for four days leave, but on the same day he was informed by the office that his services have been terminated by the respondent. On 10.11.2022, petitioner sent another email for his full & final payment for the months of September and October, 2022 as he had served for ten days with the respondent in the month of October, 2022, but no reply of his email was given by the respondent and even no salary was paid to him. Thereafter, the petitioner was constrained to resign from his service on 06.10.2022. Thereafter the respondent kept the claimant on notice period for one month, but due severe illness the claimant could not attend the office for not more than 15 days in the month of October, 2022. Respondent has not paid salary to the petitioner for the month of September and October. Apart from claiming salary @ ₹ 10,000/- for the months of September and October, 2022, It has been prayed through this application that the respondent be directed to pay compensation for his illegal termination and further compensation of ₹ 50,000/- for mental harassment, financial loss and sufferings along-with interest @ 18% per annum,

3. Notice of this application was sent to the respondent in pursuance thereof the respondent contested the claim by filing reply, in which the respondent has not disputed that the petitioner worked with the respondent and he was drawing salary @ ₹ 10,000/- per month, however, it was denied that the petitioner fell ill on 28.10.2022. Respondent claimed that the petitioner was habitual absentee and was irregular and irresponsible during his service period. Petitioner joined the office for 19 days in September and only for 7 days in October. The HR of the respondent also requested the petitioner to submit his medical certificate, but the same was not submitted by him. The petitioner has signed a contract with the respondent at the time of his joining and as per the contract, if the petitioner breach the contract (leave without notice), he will not get salary without serving the thirty days' notice period as such respondent is not liable to be pay salary as claimed by the petitioner and prayed for the rejection of his claim.

4. Petitioner filed rejoinder and denied the averments as made in the reply. Petitioner specifically denied that he had only joined the office for 19 days in the month of September, 2019 and further denied that he was irregular and irresponsible during his service period. Petitioner denied that there was a contract with the respondent which he had signed at the time of his joining and further denied that he committed any breach of such contract. He claimed that he had served for full month in September, 2022.

5. On the pleadings, this Court formulated the following issues on 12.05.2023.

1. Whether the respondent had not paid the salary of September & October, 2022 to the claimant and had illegally retrenched the services of the petitioner without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . *OPP*.

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

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

7. Before proceeding further, it is pertinent to mention here that when the case was listed for the evidence of the petitioner, respondent failed to appear before this court despite notice and was proceeded against *ex-parte vide* order dated 30.03.2024

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

Issue No.1 : No. Not entitled to any relief

Issue No.2 : No

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

REASONS FOR FINDINGS

Issue No 1.

9. So far as the claim of the petitioner is concerned, he has filed the present application under Section 2-A of the Act, which reads as under:

"**2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:**

(1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section l0, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)".

10. The bare perusal of above provision of law makes it clear that the provisions of Section 2-A can be invoked by a workman/employee if he has been dismissed, discharged or retrenched or otherwise terminated and any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be an industrial dispute under the aforesaid provision of law.

11. Coming to the case in hand, the case as set up by the petitioner is that he has resigned from his service on 06.10.2022. Through this application, the petitioner has claimed his salary for the month of September and salary of 10 days for the month of October, 2022, apart from claiming compensation for mental harassment. There is no averment in the petitioner that he had completed

240 days in a calendar year immediately preceding 06.10.2022. Though, the petitioner has averred that he was constrained to resign from service and even if this Court liberally construe to word constrained to be forceful resignation then also to claim the benefits of Section 25-F of the Act, the petitioner was required to have pleaded and proved that he had completed 240 days in a calendar year immediately preceding to his tendering resignation, however, such evidence is clearly missing. As per the claim of the petitioner, he worked with the respondent from April, 2022 till month of October 2022.

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

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his illegal termination, which as per the claim of the petitioner took place in October 2022. There is not even single averment made by the petitioner either in his application/ claim or in the evidence which is led by way of affidavit as Ex. PW-1/A that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his termination In view of the discussion made hereinabove, the petitioner has not been able to convince this Court that there otherwise termination of service of workman or any dispute and difference between the workman and employer connected with or arising out of such discharge, dismissal, retrenchment or termination of the workman and there is no provision under Section 2-A of the Act for recovery of due wages from the respondent. In view of the fact that the present petition has been filed under Section 2-A, the relief of wages to the petitioner for the months of September & October, 2022 cannot be granted under this provision nor any compensation could be paid to the petitioner, in view of the fact that the petitioner has failed to establish "illegal retrenchment" in violation of the provisions of the Act, hence, issue No.1 is decided against the petitioner.

Issue No. 2

15. Nothing has been argued on this point nor any evidence has been led by the respondent and since the respondent has been proceeded against ex-parte this issue is decided against the respondent.

Relief

16. In view of my findings on issues no.1 & 2, above, the claim filed by the petitioner fails and is hereby dismissed by holding that the petitioner is not entitled to any relief as claimed. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 21st day of August, 2024.

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

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

Reference No : 78 of 2018

Instituted on : 01.05.2018

Decided on : 23.08.2024

Renu w/o Shri Raju, r/o Ward no. 2, Nalagarh, Tehsil Nalagarh, District Solan, H.P.
. . *Petitioner*.

Versus

The General Manager M/s Sri Niwas (Gujrat) Pvt. Ltd., Village Bagwania, P.O. Manpura, Tehsil Nalagarh, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Vishal Sharma, Advocate

For the respondent : Ms. Neetu Sharma, Advocate

AWARD

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

"**Whether termination of the services of Smt. Renu w/o Shri Raju, r/o Ward no. 2, Nalagarh, Tehsil Nalagarh, District Solan, H.P. *w.e.f.* 15.05.2017 by the General Manager M/s Sri Niwas (Gujrat) Pvt. Ltd., Village Bagwania, P.O. Manpura, Tehsil Nalagarh, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above management?"**

2. The facts as emerges from the statement of claim are that the petitioner is serving as a Sweeper in the respondent company for the last seven years. The performance of the petitioner was upto the satisfaction and there was no complaint regarding her work and conduct at the relevant time throughout this period. One lady employee of the respondent namely Ms. Reeta, who by habit is a very arrogant and rude person without any reason always insulted and humiliated the petitioner and even addressed the petitioner by her caste name. On 24.04.2017, Ms. Reeta Devi intentionally

insulted the petitioner by addressing the petitioner by her caste name, in front of number of employees to which the petitioner retorted and protested and in turn Ms. Reeta Devi pounced over the petitioner and during such scuffle both sustained simple injuries. Petitioner had been regularly complaining against Ms. Reeta Devi regarding her bad behaviour to the supervisor Shri Ghyanshyam and HR Manager Shri Manoj Kumar, but they never paid any heed to such complaints of the petitioner and advised the petitioner to go to ESI Hospital for treatment for few days. After completion of such treatment, the petitioner reported back for duty on 04.05.2017 and submitted her fitness certificate to Manager HR Shri Manoj Kumar, who made her to sit and wait for about three hours, but the petitioner was not called back. She was regularly reporting for duty till 09.05.2017, but was made to sit at factory gate. On 10.05.2017 petitioner was called by Shri Manoj Kumar, HR Manager and he asked her if she was keen to join duty, she would have to give written undertaking of good behaviour in future. When petitioner expressed her inability to write any such undertaking being illiterate as such she was asked to put signatures on blank papers assuring that such undertaking would be got written from some other staff member. On that day, after completion of duty, the gateman conveyed her direction of the Manager HR that her services were no more required, as such her services have been illegally terminated in utter violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). Petitioner has claimed that she has been illegally terminated and she has been condemned unheard without affording any opportunity of being heard and without following the proper procedure as neither any show cause notice has been issued to her nor any domestic enquiry has been conducted against her. Through this claim petition, the petitioner has prayed that her illegal termination dated 10.05.2017 be set aside and she be reinstated in service with all consequential service benefits as provided under the Act and in alternative if the petitioner is not held entitled to reinstatement as prayed, she be held entitled to all benefits as provided under the Act such as un availed leave wages, 15 days wages for every completed year of service, bonus, gratuity and regular wages.

3. Notice of this claim was sent to the respondent, in pursuance thereof respondent contested the claim by filing reply. Apart from taking preliminary objection of maintainability, the petitioner has filed a false claim that she had served with the respondent for seven years. Petitioner was appointed on 02.04.2014 as unskilled worker (sweeper), and during this period, she rendered her services with intermittent long absence after every few days and she has never put continuous service as claimed. It is also alleged that the petitioner who is of quarrelsome nature even misbehaved with her colleagues and used to go to extent of manhandling them and some time under heat of the moment, she used to commit indiscipline by misbehaving with seniors, committing act of disobedience and used to create scenes on petty matters. Despite regular warnings she did not mend her ways and her behaviour became totally intolerable. On 24.04.2017 at 12:45 PM petitioner had open fight with Ms. Reeta Devi and there had been open exchange of abusive language between them which created a very awkward situation in the factory where number of staff members gathered and written complaint about such occurrence was made by Safai Supervisor Shri Ghanshyam Pandey, Shri Manoj Kumar, HR Manager and few others. Shri Ghanshyam Pandey was also manhandled. After 24.04.2017, petitioner proceeded on leave and again resumed her duty on 05.05.2017. She was called by the Manager HR for giving explanation within two days regarding her misconduct, but no reply was given by the petitioner. On 11.05.2017, petitioner confessed her acts of misbehave/misconduct vide letter dated 7.5.2017. Petitioner also tendered apology vide letter dated 7.5.2017. On 15.5.2018, petitioner tendered resignation and thereafter she never returned to duty after having left without any address for communication. Her resignation was accepted on 15.5.2017 and since then the company has been waiting for her return to receive full & final payment. Petitioner had raised demand notice through Labour Inspector, Nalagarh where the management tried its best to settle the dispute but the petitioner did not come to any reasonable terms. Respondent prayed for the dismissal of the claim.

4. Petitioner filed rejoinder in which she denied the preliminary objections and reiterated the averments as made in the claim petition.

5. On the pleadings, this Court formulated the following issues on 20.12.2019.

1. Whether the termination of the petitioner *w.e.f.* 15.05.2017, is voilative of the provisions of the Industrial Disputes Act, as alleged? If so, what relief the petitioner is entitled to? . . *OPP*.

2. Whether the claim is not maintainable as the petitioner has not approached this Court with clean hands & has been working intermittently & has been of quarrelsome nature ever, as alleged? If so, its effect thereto? . . *OPR*.

3. Relief

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

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

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

Issue No. 1 : Yes

Issue No. 2 : No

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

REASONS FOR FINDINGS

Issue No. 1

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

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

11. During cross-examination, she admitted that a quarrel took place between her and Reeta, Sweeper. She denied that she is of quarrelsome nature. She admitted that during the quarrel Sh. Manoj H.R. intervened. She denied that neither she had filed the reply to show cause notice nor attended her duties thereafter. She stated that she had not tendered any apology in writing. She denied that her service was not terminated by the respondent. She further stated that the resignation letter Mark-RX-1 is not bearing her signature.

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

13. In rebuttal, respondent has examined Shri Manoj Kumar, as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A, which is reproduction of the averments as made in the reply.

14. During cross-examination, he denied that he is not authorized to appear on behalf of the company. He further denied that the petitioner was discharging her duty with sincerity. He also denied that the petitioner was subjected to beating and was abused by her co-worker Reeta Devi. He denied that Reeta Devi used caste remarks against the petitioner. He admitted that the petitioner brought the matter to the notice of H.R. He denied that she was not allowed to join her duty. He denied that the resignation was not tendered by the petitioner out of her freewill and the signature of the petitioner were obtained on blank papers. He admitted that full & final dues have not been paid to the petitioner.

15. The respondent has examined Shri Ghanshyam Pandey, as RW-2, who also led his evidence by way of affidavit Ex. RW-2/A, which is also a reproduction of the averments as made in the reply.

16. During cross-examination, he admitted that Reeta Devi had used caste remarks against the petitioner. Self stated that both were fighting with each other. He denied that the petitioner was not allowed to join her duty and resignation was not given by the petitioner out of her freewill. He denied that signature of the petitioner were obtained on the blank paper. He admitted that full and final dues have not been paid to the petitioner.

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

18. Coming to the case in hand the main thrust of the respondent's case is on Ex. RW-1/A. At the time of arguments the ld. counsel for the respondent had submitted that the petitioner herself has tendered resignation Ex. RW-1/A as such she cannot claim that her services were terminated illegally. So far the stand taken by the respondent is concerned, it is alleged that the petitioner had indulged into fight with one Ms. Reeta and had also misbehaved Sh. Ghanshaym Supervisor when he intervened. The case of the respondent is that they never terminated the services of the petitioner but she submitted her resignation on 15.05.2018 which was accepted by the respondent on the same day and respondent is ready and willing to pay her full & final due. So far as this plea is concerned there is nothing on record which could show that the petitioner had created nuisance in the factory, as no inquiry was conducted by the respondent into the alleged fight between petitioner and Ms. Reeta.

19. The petitioner has claimed that she is an illiterate lady and she sustained injuries during fight with Ms. Reeta Devi and had got her treatment from ESI Hospital Baddi. When she submitted her fitness certificate to HR Manager, she was not allowed to join her duties. On 10.05.2017, she was called by the HR Manager who asked her to give written undertaking of good behavior in future, however, petitioner expressed her inability to write any such undertaking being illiterate then she was made to sign blank paper on the pretext that the undertaking would be got written from any other staff member. The petitioner has not been cross-examined by the respondent on the point that she is illiterate. Moreover the signatures of the petitioner are on the left side of the application. There is no document or dairy register produced to establish that this resignation letter was anywhere entered in the records of the respondent. Apart from this there is no mention that who had received this resignation and who accepted the same. Had this resignation been voluntarily there would be some order from the respondent management for accepting this resignation and counter of such acceptance was also to be forwarded to the petitioner, but such evidence is clearly missing. There is no evidence worths the name that acceptance of such resignation was ever conveyed to the petitioner. Though respondent has taken the plea that they were not having the address of the petitioner as such they could not contact her, but this plea cannot believed as the petitioner was working with the respondent for last more than six years and it cannot be presumed that the respondent had engaged the petitioner without inquiring about her address. Since, this is not know that who had received her resignation letter and on the same day who had accepted her

resignation as such the version put forth by the petitioner that her signatures were obtained on blank papers appears to be plausible. Apart from that as per the plea of the respondent the resignation was accepted on 15.05.2017, but neither any intimation of acceptance of resignation to petitioner nor the legal dues have been paid to her till date. So much so the respondent has not even issued any letter to the petitioner, that consequent upon her resignation, she is entitled to financial benefits which she can collect. In the absence of any such evidence the resignation Ex. RW-1/A cannot be held to be voluntarily. The Hon'ble High Court of Bombay, in case titled as **Shiram Swami Shikshan Sanstha, *vs.* Education Officer, Zilla decided on 24 February, 1983, 1983 (85) Bombay Law Reporter 288**, has held as under:

> **"We have, therefore, to consider the question whether the employee can move the Tribunal under S. 9 of the Act in the case of an alleged forced resignation. The language used in S. 9 of the Act covers not only dismissal and removal but all forms of termination of service. On behalf of the petitioner, a decision of the Karnataka High Court in M/s. Southern Roadways Ltd., Bangalore v. Padmanabhan, (1979 Lab I.C. 234) arising under the provisions of the Industrial Disputes Act, 1947, is relied upon to show that the phraseology "or otherwise terminates the services" covers the case of forced resignation and, therefore, a reference under S. 2-A read with S. 10 of the Act is maintainable in the case of a forced resignation. We fell that it is a well settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer is by the act of the employer. In substance the contract of service comes to an end in such case by the action on the part of the employer. It, therefore, amounts to termination of service by the employer. In the decision of the Karnataka High Court (cited supra), the Court was considering the phraseology "otherwise terminates the services" used in S. 2- A of the Industrial Disputes Act, 1947. A similar phraseology is used in S. 9(1) of the Act. We are in agreement with the view taken by the Karnataka High Court in the decision cited supra. We are supported in this view also by an old decision by the Additional Judicial Commissioner in Abraham Reuben v. Karachi Municipality (A.I.R. 1929 Sin. 69), which has relied upon an English decision in Stephenson v. London Joint Stock Bank Ltd. (1903) 52 W.R. 183). We therefore, hold that the phraseology "whose services are otherwise terminated" used in S. 9(1) of the Act covers cases of forced resignation and, therefore, in such matters, an employee can move the Tribunal under S. 9(1) of the Act"**.

20. In the instant case since the respondent has taken the plea that the petitioner remained absent and she had misbehaved with her co-worker and other senior officials, the respondent company was duty bound to prove this fact by conducting domestic enquiry that the petitioner remained absent from her duties and that she misbehaved with her co-worker and senior officials of the company.

21. Mere writing a letter in the shape of resignation dated 15.05.2017, without there being a formal acceptance to the same and communication thereof to the petitioner, the same cannot be treated as the resignation letter. Admittedly, full and final payment has also not made to the petitioner till date. The fact of the matter is that the petitioner had raised the industrial dispute with the Labour-*cum*-Conciliation Officer, after her illegal termination and vide notification dated 28.02.2018. The matter was referred to this Court by the appropriate Government for legal adjudication. Since, the resignation letter has been found by this Court to be not voluntarily given by the petitioner and since the acceptance thereof has not been communicated to the petitioner, it is to be considered that the respondent has terminated the services of the petitioner without complying with the mandatory provisions of the Act.

22. The petitioner has claimed that she worked continuously with the respondent for the last seven years but the respondent has terminated the services of the petitioner orally. No action has been initiated against the petitioner by way of domestic enquiry. Before, terminating the services of the petitioner, it was incumbent upon the respondent to have issued notice as provided in Section 25-F of the Act, which reads as under:

> "***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 for such authority as may be specified by the appropriate Government by notification in the Official Gazette".***

23. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice, but the respondent has not complied with the provisions of Section 25-F of the Act and proceeded to terminate the services of the petitioner orally as such the termination of the petitioner from service *w.e.f.* 15.05.2017 is neither legal nor justified.

24. The other point which arises for consideration in this case is that whether there is any violation of Section 25-G of the ibid Act which reads as under:

> "***25-G. Procedure for retrenchment***.- *Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

25. To invoke this provision, the workman is not required to prove that he had worked for 240 days preceding to the date of her termination, but it is sufficient for her to plead and prove that while terminating her services, the employer violated the rules of "last come first go". The petitioner has not made any averments in the statement of claim and also did not utter a single word while appearing in the witness box that who are the newly engaged persons who were junior to her and when they joined the respondent company. Neither there is any evidence to establish on record that juniors have been retained by the respondent in violation of the provisions of Sections 25-G & 25-H of the Act nor there is anything on record to establish that the respondent has violated the principles of "last come first go".

26. Now, the last question which has been raised by the petitioner through this claim petition is that she is not only entitled for reinstatement with seniority and continuity but also for back-wages. The petitioner in her statement of claim has not made a single averment that she is not

gainfully employed anywhere after her illegal termination. However, she in her evidence by way of affidavit Ex. PW-1/A, has deposed that since the date of her illegal termination, she is unemployed. It is settled that the entitlement of any employee to get re-instated does not necessarily and mechanically result in payment of full or partial back-wages which is independent of re-instatement and host of factors like the manner and method of selection and appointment, nature of appointment whether ad-hoc, short term, daily wage, temporary and permanent in character and length of service, which the workman had rendered with the employer, are required to be taken into consideration before passing any order for award of back-wages. This position was reiterated in **Kanpur Electricity Supply C. Ltd. *Vs.* Shamim Mirza (2009) 1 SCC 20** as well as in **Ritu Marbles Vs. Prabhankant Shukla (2010) 2 SCC 70**.

27. In the case in hand the petitioner has failed to show that she was not gainfully employed anywhere. In **Kendriya Vidyalaya Sangathan Versus S.C. Sharma (2005) SCC 363**, the Hon'ble Apex Court held that the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on the employee to prove that.

28. Coming to the case in hand, since the petitioner has not led any convincing evidence to discharge the initial burden put on her to show that she is not gainfully employed anywhere after her illegal termination as such she is not entitled to any back-wages and accordingly issue No.1 is decided in favour of the petitioner.

Issue No. 2

29. Now coming to issue no. 2, there is nothing on record that as to how this petition is not maintainable as the petitioner has not approached this Court with clean hands. The present reference petition has been sent to this Court by the appropriate Government for adjudication and the same is maintainable before this Court and since the services of the petitioner have been illegally terminated by the respondent without following the mandatory provisions of the Act and that without conducting any enquiry , hence, issue no. 2 decided against the respondent.

Relief

30. In view of my aforesaid discussion, the claim filed by the petitioner succeeds and is hereby allowed. The respondent company is directed to re-engage the petitioner in service froth with from 15.05.2017 with seniority and continuity but without any back-wages. The reference is answered in the aforesaid terms.

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

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

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

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

Reference No : 19 of 2022

Instituted on : 14.01.2022

Decided on : 27.08.2024

Vicky Kumar, s/o Shri Kirtan Pal, r/o Village Rampurghat, P.O. Shivpur, Tehsil Paonta Sahib, District Sirmour, H.P. 173025 . . *Petitioner*.

Versus

The Occupier/ Factory Manager, M/s Vidit Healthcare Kishanpura, Tehsil Paonta Sahib, District Sirmour, H.P. 173205 . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Dinender Panwar, Adv.

For the respondent : Shri Ashutosh Bhardwaj, Adv.

AWARD

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

"**Whether termination of the services of Sh. Vicky Kumar, S/o Shri Kirtan Pal, r/o Village Rampurghat, P.O. Shivpur, Tehsil Paonta Sahib, District Sirmour, H.P. 173 025 by Occupier/ Factory Manager, M/s Vidit Healthcare Kishanpura, Tehsil Paonta Sahib, District Sirmour, H.P. *w.e.f.* 25.02.2021 without conducting domestic enquiry and complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement of the services, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management/ employer?"**

2. The case of the petitioner as emerges from the statement of claim is that the petitioner joined his duty as labourer in liquid filling machine (Machine Operator) on 01.08.2018. Since, then he was discharging his duty honestly, sincerely and diligently to the entire satisfaction of his superiors. Petitioner has completed 240 days in each calendar year, but on 24.02.2021, respondent company orally terminated the services of the petitioner by saying that he had taken leave on 22.02.2021, without informing anyone. It is averred that the petitioner was ill on that day and on the next day when he joined his duty he had informed his seniors regarding his illness, despite that his services were terminated. Petitioner was getting salary of Rs. 14,500/- per month out of which PF of Rs. 1,200/- and ESI of Rs. 102/- per month was deducted by the respondent. There are more than 300 to 400 employees working in the respondent establishment. Many senior and junior persons to the petitioner are still working with the respondent. Respondent has retained Mr. Neeraj Kumar and Mr. Shashi Bind Yadav who are junior to the petitioner in violation of the principles of "last come first go". The petitioner raised demand notice regarding his re-engagement in services. No retrenchment compensation has been paid to the petitioner at the time of his retrenchment nor any notice in writing indicating the reasons for retrenchment has been issued to the petitioner. The

respondent has failed to comply with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). It is prayed through this petition that respondent be directed to re-instate the services of the petitioner with retrospective effect along with all the consequential benefits, back wages and other benefits.

3. Notice of this petition was sent to the respondents, in pursuance thereof respondent contested the petition by filing reply, in which respondent took preliminary objections that the petitioner has not approached the Court with clean hand, application has been filed with malafide intention to abuse of process of law and same deserves to be dismissed.

4. On merits, it is admitted that the petitioner was working as Machine Operator with the respondent but it was denied that he was discharged his duties properly. It is claimed that petitioner was habitual of indiscipline. On 22.02.2021 petitioner remained absent from the work and respondent sought explanation from the petitioner on 24.02.2021 but he did not submit any reply and threatened the staff of the respondent that he will drag the respondent to the Court. Petitioner created nuisance at the factory gate and threatened the staff and management of the respondent with dire consequences and thereafter left the premises at his own and never returned. Many warning letters were issued to the petitioner. It was disputed that the petitioner has completed 240 days in each calendar year and denied that the services of the petitioner were orally terminated. Many written and oral warnings were issued to him but he did not change his working style and did not improve. On 31.05.2019 petitioner had also submitted an apology letter when he was absent from duty without leave or prior information. The petitioner in fact had stopped coming to the factory on time since 04.01.2021 and remained absent on many occasions. Explanations were also sought from the petitioner vide letters dated 12.01.2021, 01.02.2021, 12.02.2021 and 24.02.2021 but no reply/ response was submitted by the petitioner. All admissible dues have been given to the petitioner. Respondent prayed that petition be dismissed.

5. No rejoinder was filed.

6. On the pleadings, this Court formulated the following issues on 19.11.2022.

1. Whether the termination of the services of petitioner *w.e.f.* 25.02.2021 by the respondent without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . *OPP*.

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

3. Relief

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

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

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

Issue No. 1 : Partly Yes.

Issue No. 2 : No.

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

REASONS FOR FINDINGS

Issue No. 1

10. So far as issue no. 1 is concerned, the onus to prove the same is on the petitioner. Coming to evidence led by the petitioner, petitioner stepped into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition. He also tendered in the evidence letter dated 02.03.2021 Ex. PW-1/B.

11. During cross-examination he denied that he remained absented from the work without informing the management. He further denied that he misbehaved with his co-workers inside the factory premises and also with the management. He further denied that he was not discharging his duties with sincerity and on this account the company had suffered losses. He further denied that he had received notices which were issued to him. Self stated that all notices have been issued after filing of the case. He admitted that the apology letter dated 31.05.2019, is in his own handwriting and bears his signatures. He further denied that he threatened the management to see them in the Court. He further denied that his services were not orally terminated by the respondent.

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

13. In rebuttal, the respondent has examined Shri Manish Bajaj, General Manager as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A, which is also a reproduction of the averments as made in the reply. He also placed on record apology letter Ex. RW-1, notice Ex. R-2 to Ex. R-5 and reply Ex. R-6.

14. During cross-examination, he denied that Ex. RW-1/A was taken forcefully. He admitted that the letter Ex. R-1/A is two year old from the date of retrenchment of the petitioner. He denied that letters Ex. R-2 to Ex. R-5, were never issued to the petitioner however he admitted that there is no receipt in these letters. Self stated that petitioner had refused to accept these warning letters. He denied that no register post letter was issued to the petitioner and further stated that co-workers of the petitioner had sent the warning letters to the petitioner. He admitted that no other notice regarding performance of petitioner and that he was habitual of indiscipline were sent to the petitioner. He denied that petitioner had informed his superiors about his absence on dated 22.02.2021 vide Ex. PW-1/B. He stated that letter Ex. PW-1/B was not received by the respondent company. He admitted that juniors of the petitioner are still working with the respondent company.

15. The other witness examined by the respondent Sh. Deepak Kumar, who works as Manager, HR in the respondent company. He deposed that he has brought the attendance registered for the month of November, 2020 & December, 2020 as well as January, 2021 & February, 2021 the copies of which are Ex. RW-2/A, Ex. RW-2/B, Ex. RW-2/C and Ex. RW-2/D, which are correct as per the original record. During cross-examination, he admitted that the petitioner was working since, 2017 and he worked up till 24.02.2021.

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

17. The factual matrix of the case is that the petitioner has taken plea that he was engaged by the respondent company as machine operator on 01.08.2018 and he discharged his duty as such till 22.02.2021. The plea taken by the petitioner is that his services were orally terminated by the respondent on 24.02.2021 without complying with the mandatory provisions of the Act despite the

fact that he had completed more than 240 days in each calendar year. Before terminating his services neither any notice has been given to him nor he was paid retrenchment compensation. Apart from this petitioner has also alleged gross violation of Sections 25-G and 25-H of the Act.

18. In the instant case admittedly the petitioner was appointed as machine operator on 01.08.2018. The case put up by the respondent that on 22.02.2021, petitioner remained absent from the work and when his explanation was sought on 24.02.2021 he did not submit any reply and threatened the staff and created nuisance. Many written and oral warnings were issued to him but he did not improve. Previously also on 31.05.2019 petitioner had submitted an apology letter. Petitioner stopped coming to the factory on time since 04.01.2021. Explanations were sought vide letters dated 12.01.2021, 01.02.2021, 12.02.2021 and 24.02.2021 and thereafter petitioner himself left the job.

19. Coming to apology letter Ex. R-1, the same pertains to year 2019. This letter would not justify the termination of the petitioner at a later stage in the year 2021. So far as notices Ex. R-2 to Ex. R-5 are concerned, there is nothing on record to that how these letters/ notices were sent to the petitioner nor there is any evidence as to who had served these letters/ notices upon the petitioner. Though there is report on these letters that Ex. R-2 to Ex. R-5 were not accepted by the petitioner, but there is nothing on record to establish that who had made these reports on Ex. R-2 to Ex. R-5. As per the statement of RW-1 these letters/ notices were sent to the petitioner through his co-workers, but neither the names of such co-workers have been disclosed nor they have been examined by the respondent. If the evidence of RW-1 nor RW-2 is seen they have not uttered a single word that how letter were served upon the petitioner and who had served these letters on the petitioner. There is nothing on record to suggest that any letter was sent to the petitioner through registered post nor any postal receipt of the same has been placed on record.

20. So far as the allegation of misbehavior and misconduct are concerned. It is admitted fact that the respondent has not conducting any inquiry about absence or about misconduct of the petitioner. The statement of the petitioner as well as statement of claim and reply establish on record that the petitioner had completed 240 days in each calendar year and even in the calendar year immediately preceding to his oral termination.

21. Respondent though has taken the plea that the petitioner had abundant the job and he stopped coming to the factory on time since 04.01.2021. So far as this plea is concerned, there is nothing on record except the bald statement of RW-1 to establish that the petitioner had abandoned the job at his own. Moreover, it is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as ***Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875*** that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as ***State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286***, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job.

22. Mere statement of Shri Manish Bajaj (RW1), alleging that the workman has abandoned the job himself is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was to be conducted by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of

the respondent is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employers is not established.

23. Retrenchment under Section 2 (oo) of the Act, is comprehensive enough to include all types of terminations of service, unless the termination falls within any of the exceptional categories mentioned therein.

24. The petitioner has claimed that he worked continuously as such till 22.02.2021, but the respondent has terminated the services of the petitioner orally. Before, terminating the services of the petitioner, it was incumbent upon the respondent to have issued notice as provided in Section 25-F of the Act, which reads as under:

> "*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 for such authority as may be specified by the appropriate Government by notification in the Official Gazette".*

25. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless she/he has been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice, but the respondent has not complied with the provisions of Section 25-F of the Act and proceeded to terminate the services of the petitioner orally as such the termination of the petitioner from service *w.e.f.* 25.02.2021 is neither legal nor justified.

26. The other point which arises for consideration in this case is that whether there is any violation of Section 25-G of the ibid Act which reads as under:

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

27. Coming to the case in hand, the petitioner has claimed that the junior person to him are still working. He also named such person in the statement of claim and his affidavit Ex. PW-1/A. Respondent has not refuted these allegations categorically. RW-1 during cross-examination admitted this fact that junior of the petitioner are still working which establish on record that there is violation of Section 25-G of the Act, as the respondent have violated the principle of "first come last go".

28. Now, the last question which has been raised by the petitioner through this claim petition is that he is entitled for reinstatement not only with seniority and continuity but also with back-wages, however, while filing the claim or by leading evidence he has not made any averments that he is not gainfully employed anywhere after his illegal termination.

29. It is settled that the entitlement of any employee to get re-instated does not necessarily and mechanically result in payment of full or partial back-wages which is independent of re-instatement and host of factors like the manner and method of selection and appointment, nature of appointment whether ad-hoc, short term, daily wage, temporary and permanent in character and length of service, which the workman had rendered with the employer, are required to be taken into consideration before passing any order for award of back-wages. This position was reiterated in **Kanpur Electricity Supply C. Ltd. *Vs.* Shamim Mirza (2009) 1 SCC 20** as well as in **Ritu Marbles *Vs.* Prabhankant Shukla (2010) 2 SCC 70**.

30. In the case in hand the petitioner has not shown that he was not gainfully employed anywhere. In **Kendriya Vidyalaya Sangathan *Versus* S.C. Sharma (2005) SCC 363**, the Hon'ble Apex Court held that in question of determining the entitlement of a person to back wages, the employee has to show that he was not gainfully employed. The initial burden is on the employee to prove that. The Hon'ble Apex Court in **National Gandhi Musuem Vs. Sudhir Sharma (2-21) 12 SCC 439** has considered this aspect and held as under:

> **"Whether an employee after dismissal from service was gainfully employed is something, which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden, however, in what manner the employee can discharge the said burden will depend upon peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer."**

31. Coming to the case in hand, since the petitioner has failed to discharged the initial burden put on him to show that he is not gainfully employed anywhere after his illegal termination as such he is not entitled to back-wages and accordingly issue No.1 is decided partly in favour of the petitioner.

Issue No. 2

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

Relief

33. In view of my aforesaid discussion, the claim filed by the petitioner succeeds and is hereby partly allowed. The respondent company is directed to re-engage the petitioner in service since 24.02.2021 with seniority and continuity but without any back-wages. The reference is answered in the aforesaid terms.

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

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

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

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

Reference Number : 62 of 2023

Instituted on : 08.05.2023

Decided on : 28.08.2024

Suresh Kumar, s/o Sh. Kamal Chand, r/o Village Shilly, P.O. Pulbahal, Tehsil Chopal, District Shimla, H.P. . . *Petitioner*.

Versus

1. The Managing Director, M/S Cliff Security Services Pvt. Ltd. C/O 555, 5th Floor, Cloud-9, Plot No. RC1/2, Sector-1, Vaishali Ghaziabad-201010.

2. The Managing Director, Trent having corporate address, Trent House, G-Block, Plot No. C-60, Beside CITI Bank, Badra-Kurla Complex, Bandra (East), Mumbai-400051.

3. The Managing Westside, Trent Ltd. Anand Complex, The Mall Shimla, H.P.
. . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For Respondent No. 1 : Sh. Ravi Shankar, AR

For Respondents no. 2 & 3 : Sh. Mukesh Sharma, Adv.

AWARD

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

"Whether the transfer qua termination of Sh. Suresh Kumar, s/o Sh. Kamal Chand, r/o Village Shilly, P.O. Pulbahal, Tehsil Chopal, District Shimla, HP from Shimla to Zirakpur Zudio by the employers i.e. (i) the Managing Director, M/S Cliff Security Services Pvt. Ltd. C/O 555, 5th Floor, Cloud-9, Plot No. RC1/2, Sector-1, Vaishali Ghaziabad-201010 (ii) The Managing Director, Trent having corporate address, Trent House, G-Block, Plot No. C-60, Beside CITI Bank, Badra-Kurla Complex, Bandra (East), Mumbai-400051 (iii) The Managing Westside, Trent Ltd. Anand Complex, The Mall Shimla, H.P. without complying with the provisions of the Industrial Disputes

Act, 1947 is legal and justified. If not, what service benefit and compensation the aggrieved workman is entitled to from the above employer?"

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

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

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

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

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

5. Rule 22 reads thus:—

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

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

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

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

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

9. As per the reference, it was required of the petitioner to prove on record that the termination of his services *w.e.f.* 01.07.2022 (as mentioned in the statement of claim). was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is no evidence to this effect on record on the part of the petitioner/workman. There is nothing on record to establish that, services of the petitioner were terminated illegally by the respondent on 01.07.2022. At the risk of repetition it is reiterated that the petitioner/workman has not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 28th day of August, 2024.

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

CHANGE OF NAME

I, Veer Dei w/o Sh. Prabhu Ram, r/o Village Baitlu, Tehsil Baddi, Distt. Solan (H.P.) declare that my name is wrongly written in Aadhar Card as Savitri Devi (Aadhar Card No. 2806 0382 0621) but my name is Veer Dei. That I want to update the same name in Aadhar card as VEER DEI. Kindly note all relatives and general public.

VEER DEI
w/o Sh. Prabhu Ram,
r/o Village Baitlu,
Tehsil Baddi, Distt. Solan (H.P.).

CHANGE OF NAME

I, Deepu s/o Halku Ram, r/o Village Nika Thana, P.O. Chauntra, Tehsil Joginder Nagar, District, Mandi (H.P.) declare that name of my son wrongly written as Raghav in his Aadhar Card No. 8998 0629 2034. His correct name is Ram Chander.

DEEPU
s/o Halku Ram,
r/o Village Nika Thana, P.O. Chauntra,
Tehsil Joginder Nagar, District, Mandi (H.P.).

CHANGE OF NAME

I, Kelasan Devi w/o Late Sh. Bhagi Rath, r/o Village Pharnohal, P.O. Bari, Tehsil & District Hamirpur (H.P.) declare that my name is wrongly entered as Kalaso devi in my Aadhar card No. 5620 8716 8434. Whereas my correct name is Kelasan Devi as per my husband's army service record.Concerned please may note.

KELASAN DEVI
w/o Late Sh. Bhagi Rath,
r/o Village Pharnohal, P.O. Bari,
Tehsil & District Hamirpur (H.P.).

CHANGE OF NAME

I, Md Azad Alam s/o Amiruddin, r/o Idgah Colony, Lakkar Bazar Shimla, Tehsil & District Shimla (H.P.) declare that in the PAN Card my name is wrongly entered as Ajad and my father's name is wrongly entred as Mohammad Amir. Whereas my correct name is Md Azad Alam and my father's correct name is Amiruddin. All concerned please may note.

MD AZAD ALAM
s/o Amiruddin,
r/o Idgah Colony, Lakkar Bazar Shimla,
Tehsil & District Shimla (H.P.).

CHANGE OF NAME

I, Prakash Singh s/o Kashmir Singh, Village Talyahar, P.O. Talyahar, Tehsil Sadar, District Mandi (H.P.) my minor son's name Kartika Aadhar No. 9232 4931 0859 wrongly entered. Correct name is Kartik

PRAKASH SINGH
s/o Kashmir Singh,
Village Talyahar, P.O. Talyahar,
Tehsil Sadar, District Mandi (H.P.).

CHANGE OF NAME

I, Balak Ram s/o Sh. Zalam Singh, r/o Village Dalikar, P.O. Parwara, Tehsil Chachyot, District Mandi (H.P.) wants to correct my son's name as Harsh Thakur in Aadhar Card instead of Harsh Kumar. All concerned please note.

BALAK RAM
s/o Sh. Zalam Singh,
r/o Village Dalikar, P.O. Parwara,
Tehsil Chachyot, District Mandi (H.P.).

CHANGE OF NAME

I, Manju w/o Mohinder Pal, r/o Village Kaleher, P.O. Khrul, Tehsil Bhawarna (ST), District Kangra (H.P.)-176 092 have changed my name from Manju to Gasta Devi

MANJU
w/o Mohinder Pal,
r/o Village Kaleher, P.O. Khrul,
Tehsil Bhawarna (ST), District Kangra (H.P.)-176 092.

CHANGE OF NAME

I, Indu Bala w/o Sh. Mukesh Kumar, r/o Village Sakedi Jageer, P.O. Joghon, Sub-Tehsil Panjehra, Tehsil Nalagarh, District Solan (H.P.) declare that I am having Aadhar Card No. 4366 6316 5605 in the name of Indu Bala which is correct. I had received another Aadhar Card in name of Indu Devi with same number for which I had never applied. Now I want to get the Aadhar Card cancelled bearing name of Indu Devi. Report of wrong name has also been got registered at Police Post Joghon *vide* Rapat No. 22 on 08-01-2025.

INDU BALA
w/o Sh. Mukesh Kumar,
r/o Village Sakedi Jageer, P.O. Joghon,
Sub-Tehsil Panjehra, Tehsil Nalagarh, District Solan(H.P.).

CHANGE OF NAME

I, Led Ram s/o Sh. Shesh Ram, r/o Village Paranu, P.O. Kamand, Sub-Tehsil Kataula, District Mandi (H.P.) wants to correct my name as Led Ram instead of Laid Ram in Aadhar Card. All concerned please note.

LED RAM
s/o Sh. Shesh Ram,
r/o Village Paranu, P.O. Kamand,
Sub-Tehsil Kataula, District Mandi (H.P.).

CHANGE OF NAME

I, Asha Devi Mother of No. 404732Y Rank LLOG (STD) Khushal Sharma, r/o Village Sasan, P.O. Tanoh, Tehsil Bangana, District Una (H.P.) declare that I have changed my name from Veena Kumari to Asha Devi. *Vide* affidavit No. IN-HP 41866004011463X dated 17-03-2025 before notary public Bangana, District Una (H.P.).

ASHA DEVI
Mother of No. 404732Y Rank LLOG (STD) Khushal Sharma,
r/o Village Sasan, P.O. Tanoh,
Tehsil Bangana, District Una (H.P.).

CHANGE OF NAME

I, Mohan Lal s/o Moti Ram, r/o ward No. 2, Village Kundakod, P.O. Jadoli, Tehsil Nirmand, District Kullu (H.P.) have changed my son's name from Dikshit Joshi to Dakshit Joshi.

MOHAN LAL
s/o Moti Ram,
r/o ward No. 2, Village Kundakod, P.O. Jadoli,
Tehsil Nirmand, District Kullu (H.P.).

CHANGE OF NAME

I, Ram Krishan s/o Sh. Nanak Chand, r/o Village Baloni, P.O. Kirwin, Tehsil & District Hamirpur (H.P.) declare that in Aadhar card bearing No. 6336 1929 6273 my name is wrongly entered as Ram Kishan. Whereas my correct name is Ram Krishan. All concerned please may note.

RAM KRISHAN
s/o Sh. Nanak Chand,
r/o Village Baloni, P.O. Kirwin,
Tehsil & District Hamirpur (H.P.).

CHANGE OF NAME

I, Madhu s/o Sh. Kali Ram, r/o Village Dakkar, P.O. Kando Bhatnaul, Tehsil Shillai, District Sirmaur (H.P.) declare that in my Aadhar Card No. 3602 9567 5478 my name is wrongly entered as Madu which is required to be corrected as madhu. Please correct this.

MADHU
s/o Sh. Kali Ram,
r/o Village Dakkar, P.O. Kando Bhatnaul,
Tehsil Shillai, District Sirmaur (H.P.).

हिमाचल प्रदेश चौदहवीं विधान सभा

अधिसूचना

दिनांक, 28 मार्च, 2025

सं0 वि0स0–विधायन–प्रा0 / 1–1 / 2023.––हिमाचल प्रदेश विधान सभा दिनांक 28 मार्च, 2025 को सम्पन्न हुई बैठक की समाप्ति पर अनिश्चित काल के लिए स्थगित हुई।

यश पाल शर्मा,
सचिव,
हि0 प्र0 विधान सभा।

HIMACHAL PRADESH FOURTEENTH VIDHAN SABHA

NOTIFICATION

Dated, the 28th March, 2025

No.V.S.-Legn.-Pri./1-1/2023.—The Himachal Pradesh, Legislative Assembly adjourned Sine-die *w.e.f.* the close of its sitting held on the 28th March, 2025.

YASH PAUL SHARMA,
Secretary,
H.P. Vidhan Sabha.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।