राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 09 अप्रैल, 2025 / 19 चैत्र, 1947

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Dated, the 20th 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, Labour Court**–cum-**Industrial Tribunal, Kangra at Dharamshala,** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e*. **"e-Gazette":—**

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	96/18	Hari Singh	E.E. I & PH Division Chauntra	14.11.2024
2.	89/21	Chaman Lal	MCM DAV School Baghani	14.11.2024
3.	111/21	Sajjan Singh	-do -	14.11.2024
4.	90/21	Subhash Chand	-do -	14.11.2024
5.	154/19	Harpreet Kaur	M.D. M/S Checkmate Service Una	16.11.2024
6.	10/23	Gulabi Devi & Other	D.F.O. Pangi	16.11.2024
7.	140/17	Jatinder Singh	Branch Manager H.P. Gramin Bank Bhanjraru, Chamba	18.11.2024
8.	46/17	Koll Singh	Branch Manager H.P. Gramin Bank, Sach, Distt. Chamba	18.11.2024
9.	55/18	Jagdish Kumar	Principal Nurpur Public School	28.11.2024
10.	38/17	Haria Ram	D.F.O. Suket	29.11.2024
11.	564/16	Surjeet Singh	E.E.HPPWD Dharampur & other	30.11.2024
12.	683/16	Chanchla Devi	E.E.HPPWD Dharampur	30.11.2024
13.	55/17	Sanjay Kumar	M.D. M/S Shakti Hydro & other	30.11.2024
14.	37/20	Om Parkash	Pr. Govt. Medical College Chamba & other	30.11.2024
15.	122/15	Babu Ram	E.E. HPPWD, Palampur & other	30.11.2024

By order,

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

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

Reference No. : 96/2018

Date of Institution : 02.11.2018

Date of Decision : 14.11.2024

Shri Hari Singh s/o Shri Nanku Ram, r/o V.P.O. Santhal, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner*.

Versus

The Executive Engineer, Irrigation and Public Health, Division Padhar, District Mandi, H.P. . . *Respondent*.

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

For the Petitioner : Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Anil Sharma, Ld. Dy.D.A.

AWARD

The following industrial dispute has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether the termination of daily wages services of Shri Hari Singh s/o Shri Nanku Ram, r/o V.P.O. Santhal, Tehsil Joginder Nagar, District Mandi, H.P. *w.e.f.* 01-07-1991 by the Executive Engineer, Irrigation and Public Health Division Padhar, District Mandi, H.P. without complying with the provisions of Section 25 (G), 25 (H) and 25 (N) of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?"

2. After receipt of above mentioned reference a corrigendum reference dated 19 May 2023 has been received from the appropriate authority for adjudication which reads as under:

> "Whereas, a reference has been made to Ld. Labour Court-cum-Industrial Tribunal, Kangra, at Dharamshala, District Kangra, H.P. *vide* notification of even No. dated 06-10-2018 for legal adjudication. However, *vide* letter dated 06-04-2023 the Executive Engineer, Jal Shakti Divison, Chauntra, District Mandi, H.P. has requested that the workman has come under control of the Executive Engineer, Jal Shakti Division, Chauntra, District Mandi, H.P. as the control of Sub Division Joginder Nagar where the workman has worked has been shifted to newly created the Executive Engineer, Jal Shakti Division, Chauntra, District Mandi, H.P. Therefore, the name of the employer in the said notification may be read as "the Executive Engineer, Jal Shakti Division, Chauntra, District Mandi, H.P. "instead of the Executive Engineer, Irrigation and Public Health Division, Padhar, District Mandi, H.P."

3. The brief facts as stated in the claim petition are that petitioner Hari Singh s/o Shri Nanku Ram r/o Village and Post Office Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. was engaged by the respondent department *w.e.f.* 1.7.1981 as daily wage blacksmith-*cum*-beldar and he did an interrupted work upto 30.6.1991 and could not complete 240 days in each calendar year due to fictional breaks given to him by the respondent department. On 30.6.1991 petitioner was ill during duty hours as he was suffering from sciatica and he proceeded on medical leave *w.e.f.* 1.7.1991 to 31.7.1991. He was receiving treatment from Dr. P.C. Rana, Physcian-cum- Medical Practioner, M/s Janta Clinic Tikroo *vide* OPD No.1789/91. After his treatment the abovementioned doctor issued medical certificate in favour of the petitioner and period of absence from duty of 30 days was opined as the period of absence necessary for restoration of his health. On 30.7.1991 the petitioner was declared fit to resume duty. ON 1.8.1991 when petitioner went to his duty place to resume his duty and submitted his medical certificate to the then Junior Engineer he was verbally informed that as per direction of Executive Engineer, I&PH Padhar his name has already been struck off from the muster roll and in his place the services of one Chingu Ram s/o Shri Tehnku Ram, r/o Village & Post Office Sainthal, Tehsil Joginder Nagar, District Mandi have been engaged and now his services are no more required by the department. On 6.8.1991 petiioner wrote a letter to Assistant Engineer of IPH Sub Division Joginder Nagar to reinstate his service but he was not reinstated. Petitioner again wrote a letter to Executive Engineer, IPH Padhar dated on 4.1.1992 but again his services were not reinstated. Thereafter he (petitioner) wrote a letter on 7.5.1993 to the

Executive Engineer, IPH Division Padhar but still his services were not reinstated. Thereafter on several occasions the petitioner approached Junior Engineer, Assistant Engineer and Executive Engineer to reinstate his services and the copy of letter dated 6.8.1991, 4.1.1992 and 7.5.1993 have been produced on record. Feeling aggrieved the petitioner had requested the Revenue Minister to pass direction for his reinstatement. The PA of Revenue Minister had forwarded to the same to Assistant Engineer, IPH Sub Division Joginder Nagar. In reply Assistant Engineer, IPH Sub Division Jognder Nagar informed on 2.9.1997 that presently no post was vacant and petitioner will be given preference as and when work starts. The request was once again made to the same Minister and the same was conveyed to Assistant Engineer, IPH, Sub Division, Joginder Nagar but once again vide letter dated 10.11.1997 informed that at present no post was vacant and petitioner will be given preference as and when the work starts. During period between 2.9.1997 to 10.11.1997 the petitioner wrote letter dated 20.10.1997 to Executive Engineer, IPH Division Padhar to reinstate his services and the said letter was forwarded by Executive Engineer to the Assistant Engineer who made remarks and direction to the Junior Engineer, Sh. O.C. Kondal to adjust the petitioner on priority but still the services of petitioner was not reinstated. Thereafter he raised industrial dispute regarding unlawful termination vide demand notice dated 12.8.1998. During conciliation proceedings dispute was not settled and the matter was sent for adjudication to this court. The said reference was registered as Reference No.41/2001 and dismissed *vide* award dated 13.6.2006. Feeling aggrieved the said award was assailed before the Hon'ble High Court of Himachal Pradesh *vide* CWP No. 4050/2009. Considering the facts mentioned in the Civil Writ Petition the Hon'ble High Court vide judgment dated 9.10.2012 set aside the impugned award dated 13.6.2006 and remanded back case to this court to give fresh findings as per reference. Thereafter this court again adjudicated the reference and dismissed the case of petitioner vide award dated 4.4.2013 on the ground that the there was no violation of Section 25-F of the Industrial Disputes Act, 1947. The award recorded its findings that respondent witness admitted that new/fresh hands had been appointed and juniors are continuously employed from the year 1991 to 2003 but no relief under Sections 25-G and 25-H was given to the petitioner because the reference was only regarding violation of Section 25-F of the Industrial Disputes Act, 1947. Feeling aggrieved by the said award it was assailed before the Hon'ble High Court of H.P. in CWP No.7369/2013. The Hon'ble High Court held that award passed by learned Labour Court was as per the reference sent to it by the appropriate government and Labour Court cannot travel beyond the terms of reference and also held that petitioner cannot be left high and dry he was claiming violation of Sections 25-G and 25-H of the Industrial Disputes Act. The Hon'ble High Court vide its judgment dated 25.7.2018 had given an opportunity to the petitioner to approach the competent authority for redressal of his grievance and appropriate government was to ensure the reference was sent to this court within the limited time period. As per directions of the Hon'ble High Court the petitioner also submitted representation dated 8.8.2018 to the Labour Commissioner and thereafter in compliance of the orders of Hon'ble High Court vide notification dated 6.10.2018 the Labour Commissioner sent the reference for adjudication to this court.

4. It is the case of the petitioner that he was terminated from his services *w.e.f.* 1.7.1991 against the principle of natural justice. As per information provided to the petitioner under RTI Act, 2005 respondent *vide* letter dated 28.2.2002, 21.2.2022, 26.2.2022 disclosed that the department has engaged fresh hands after termination of services of petitioner but no opportunity had been given to the petitioner. The seniority list obtained under RTI vide letter dated 16.3.2012 from office of Executive Engineer, IPH Division Padhar now Jal Shakti Division Joginder Nagar also disclosed that at the time of illegal termination of the petitioner *w.e.f.* 1.7.1991 persons junior to the petitioner whose names figure at serial no. 41 to 453 have been retained in service later on regularized by the department after his termination. The persons mentioned in serial no. 454, 837 have been appointed by the department after his termination and later on regularized but no opportunity had been given to the petitioner in clear violation of Section 25-H of the Industrial Disputes Act. It is also submitted that the Assistant Engineer, IPH Sub Division Joginder had given assurance to the

petitioner that in future as and when post will be vacant he would be recalled for duty. However the seniority list shows that beyond serial no. 679 persons were engaged *w.e.f.* 7.4.1998 but no opportunity was given to petitioner for re-engagement despite assurance. It is alleged that the act of department was unlawful in terminating the services of petitioner and it was highly unjustified and arbitrary amounting to unfair labour practices as well as against the provisions of Industrial Disputes Act, 1947. It is prayed that the order of termination of the petitioner dated 1.7.1991 may set aside and direction may be passed to the respondent to reinstate the services of petitioner with seniority and continuity in service with all consequential benefits along-with full back wages.

5. In reply on behalf of respondent preliminary objections qua cause of action, petitioner having worked intermittently, petition being barred by principle of res-judicata, petition being barred under provisions of order II, Rule 2 of CPC and petition being not maintainable due to delay and laches have been raised. On merits, it is asserted that the petitioner has never completed 240 days in any calendar year nor in the 12 months preceding the date of his disengagement. It is denied that the petitioner was on leave on medical grounds and it is asserted that the petitioner himself abandoned the service. All the averments regarding communication being made by the petitioner with the respondent have been denied. It is asserted that the matter had been heard and decided by the Labour Court earlier which was just legal and valid. Persons junior to the petitioner if engaged during subsequent years as the petitioner himself left the job out of his own volition do not give any right to petitioner to claim re-engagement with the department. It is also asserted that claim of the petitioner was highly belated. The petitioner failed to prove 240 days of continuous work before this court and accordingly declined the relief by the previous award dated 4.4.2013. Other averments made in the claim petition were denied and it is prayed that the petition deserves to be dismissed.

6. The petitioner by way of rejoinder has denied preliminary objections raised in the reply facts stated in the petition are reaffirmed and reasserted.

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

1. Whether the services of the petitioner were illegally terminated *w.e.f.* 01.7.1991 by the respondent without complying with the provisions of Section 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation, as claimed? . . *OPP*.

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

4. Whether the petitioner has no cause of action to file the present case? . . *OPR*.

Relief

8. In order to prove his case the petitioner has produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the claim petition and also produced on record various documents *i.e.* copy of mandays of petitioner Ex P-1, copy of medical certificate dated 30.7.1991 Ex. P-2, copy of letter dated 6.8.1991 Ex. P-3, copy of letter dated 1.1.1992 Ex. P-4, copy of letter dated 7.5.1993 Ex. P-5, copy of letter dated 2.9.1997 Ex. P-6, copy of letter dated 10.11.1997 Ex. P-7, copy of letter dated 20.10.1997 Ex. P-8, copy of letter dated 25.6.1998 Ex. P-9, copy of award dated 13.6.2006 Ex. P-10, copy of judgment dated 9.10.2012 Ex. P-11, copy of award dated 4.4.2013 Ex. P-12, copy of judgment dated 25.7.2018 Ex. P-13, copy of representation dated

18.8.2018 Ex. P-14, copy of letter dated 28.2.2022 Ex.R-15, copy of letter dated 21.2.2022 Ex. P-16, copy of letter dated 26.2.2022 Ex. P-17, copy of letter dated 16.3.2012 Ex. P-18, copy of seniority list of beldar in respect of I&PH dated 1.1.2012 Ex. P-19.

9. Respondent has examined Shri Pyare Lal, Executive Engineer, Jal Shakti Division, Chauntra, Tehsil Joginder Nagar, District Mandi by way of affidavit Ext. RW1/A wherein he reiterated the facts stated in the reply. He also produced on record copy of mandays chart of petitioner Ext. RW1/B, copy of award dated 13.6.2006 Ex. RW1/C and copy of award dated 4.4.2013 Ex. RW1/D.

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

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

Issue No.1	:	Partly yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Relief	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

12. The facts which have appeared from the pleadings of the parties as well as the record of the case show that in the present reference the award dated 4.4.2013 Ext. RW1/D is of importance. The specific findings of my learned Predecessor vide Ext. RW1/D was that the termination of service of petitioner by respondent *w.e.f.* 1.7.1991 was not violative of Section 25-F and 25-N of the Industrial Disputes Act, 1947. This reference was held not to be barred by limitation. This award was not set aside but vide Ex. P13 the Hon'ble High Court of H.P. had observed in its order in para nos. 2 and 3 as follows:

> "2. Even though no fault can be found with the findings of the learned Tribunal inasmuch as it was legally obliged to answer the reference that had been forwarded to it by the appropriate government and could not have transgressed its limit by referring to the to the provisions of the Industrial Disputes Act of which there was no reference before it. However, at the same time the petitioner cannot also be left high and dry, as his specific case is that after his services were terminated, his juniors were retained in service and many fresh appointments were made by the respondent.
>
> 3. If that be so, the petitioner, as prayed for, may approach the competent authority for the redressal of his grievance and, in case, the petitioner does so within a period of 30 days from the receipt of the copy of this judgment, then the appropriate government

shall ensure that a reference is sent to the learned Labour Court within a period of 30 days thereafter....."

13. Findings of the Labour Court qua violation of Sections 25-F and 25-N of the Industrial Disputes Act, 1947 and qua limitation have since become final in eyes of law. These findings would operate resjudicata as far as adjudication of the present reference is concerned. It is pertinent to observe that vide Ext. RW1/D specific observation and findings were given to the effect that the petitioner had not completed 240 days of continuous service so that he could fall within the provisions of Section 25-F of the Industrial Disputes Act, 1947. In opposition to the pleadings which were raised in the claim before my learned Predecessor petitioner now claims that he was given fictional breaks and not allowed to complete 240 days of continuous service by the department. The pleadings in the present case pertaining to the same termination cannot be allowed to be changed by the petitioner. As mentioned in the reply these pleadings would be barred under Order II Rule 2 of CPC. Moreover, once the findings of a competent court with regard to non completion of 240 days of continuous service have been become final a contradictory plea cannot be raised time and again by changing the pleadings.

14. The petitioner however has a right to raise claim relief under Sections 25-G and 25-H of the Industrial Disputes Act, 1947. It is held by the Hon'ble Supreme Court in Harjinder Singh vs Punjab State Warehousing Corp. AIR 2010 SC 1116 has that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason. Similarly it is held by the Hon'ble Supreme Court in Central Bank Of India vs S.Satyam & Ors. JT 1996 (7) 181, Section 25-H which is couched in wide language and is capable of application to all retrenched workmen not mere covered by Section 25-F. Thus claim of the petitioner with regard to Sections 25-G and 25-H of the Industrial Disputes Act, would subsist depending the evidence led before this court. The retrenchment under Section 2(oo) of the Industrial Disputes Act, 1947 has defined as follow:—

(oo) ["retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include - [Inserted by Act 43 of 1953, Section 2 (*w.e.f.* 24.10.1953).]

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or]

15. It is not denied by the respondent that the petitioner was employed with the respondent as the mandays chart pertaining to the petitioner has also been produced on record. Contention of the petitioner is that he was ill during 30.6.1991 for a period of one month and Dr. P.C. Rana, Physcian-cum- Medical Practioner, M/s Janta Clinic Tikroo had advised medical rest to him from 1.7.1991 to 31.7.1991. Despite submission of medical certificate, Junior Engineer struck off his name from the muster roll. The respondent has alleged that petitioner had abandoned the work and was not retrenched. RW1 Engineer Shri Pyare Lal has alleged that the petitioner used to come and go at his own will but admitted as correct that the department has not issued any show cause notice to the petitioner for his absence. The cross-examination of this witness shows that abandonment of work by the

petitioner is not proved by the respondent and it is also proved that juniors to the petitioner were retained and new appointments were made without affording an opportunity to the petitioner to re-engage in the service with the respondent. RW1 Shri Pyare Lal has admitted that letters Exts. P6 and P7 bears the stamp of Assistant Engineer, IPH Sub Division Joginder Nagar. Though he denies that such documents were received by the department. He admits that department has not made any communication with the petitioner to rejoin his engagement neither any show cause notice was issued nor any inquiry was conducted against him. He admits that persons junior to petitioner have been regularized. Though he has asserted that only those persons were regularized who completed the criteria of 240 days however the fact that they have not contacted the petitioner or offered him re-engagement while appointing new hands in the department shows clear violation of Section 25-G and 25-H of the Industrial Disputes Act, 1947. He has admitted that new hands/persons were engaged after 30.6.1991. He admits that Ext. P-19 the persons mentioned in serial no.41 to 453 are juniors and from serial no. 454 to 837 were engaged after the year 1991. He has admitted that no letter was written to petitioner regarding his re-engagement at the time when fresh hands were engaged. He further admits that no documents have been tendered by the department to show that the petitioner was gainfully employed elsewhere after his disengagement. It is admission made by the respondent witness clearly establishes the case of petitioner and the violation of Sections 25-G and 25-H of the Industrial Disputes Act by the respondent. The allegations of abandonment are not established by any piece of evidence. Accordingly issued no.1 is decided in the favour of the petitioner.

Issue No. 2

16. It has been proved from the overwhelming evidence that the respondent has retrenched the services of the petitioner without any reasonable cause however no relief under Section 25-F and 25-N can be granted to the petitioner as it was not proved that he had completed 240 days of continuous services and the decision of my learned Predecessor to this effect has become final. It is however proved that the respondent after terminating the services of the petitioner has committed the violation of the mandatory provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947. Perusal of the case file shows that petitioner had attained the age of 66 years as on 11.10.2024. In these peculiar circumstances since the petitioner was allegedly terminated in the year 1991 the only appropriate relief which can be granted in favour of the petitioner is by way of compensation. Considering overall facts and circumstances of the case the petitioner is held entitled for compensation of Rs.4,00,000/- along-with interest @ 9% since the year 1991 i.e. when the fresh hands were engaged by the respondent in violation of the provisions of the Industrial Disputes Act, 1947. Hence this issue is decided accordingly.

Issues No. 3 & 4

17. The onus of proving these issues on the respondent. Respondent has not been able to establish that after disengagement of the services of the petitioner any notice regarding abandonment was issued to the petitioner. Only defense of the respondent was regarding abandonment of the work by the petitioner and they have failed to discharge the burden imposed them and petitioner has a enforceable cause of action, hence both these issues are decided in the favour of the petitioner.

Relief

18. In view of my discussion on the issues no. 1 to 4 the claim petition succeeds and is partly allowed. The petitioner is held entitled for compensation of Rs. 4,00,000/- alongwith interest

@ 9% since the year 1991 *i.e.* when the fresh hands were engaged by the respondent in violation of the provisions of the Industrial Disputes Act, 1947.Parties are left to bear their costs.

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

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

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

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

Reference No. : 89/2021

Date of Institution : 13.7.2021

Date of Decision : 14.11.2024

Shri Chaman Lal s/o Shri Harbansh Singh, r/o Village Baghani, P.O. Khushi Nagar, Tehsil Nurpur, District Kangra, H.P. . . *Petitioner*.

Versus

1. The Chairman/Secretary, DAV College Managing Committee, Chitr Gupt Road, New Delhi-110055.

2. The Principal, MCM DAV Senior Secondary Public School, Baghani (Nurpur) District Kangra, H.P. . . *Respondents*.

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

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent(s) : Sh. M.G. Thakur, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner:

"Whether the termination of services of Shri Chamna Lal s/o Shri Harbansh Singh, r/o Village Baghani, P.O. Khushi Nagar, Tehsil Nurpur, District Kangra, H.P. *w.e.f.* 08-08-2019 by (i) the Chairman/Secretary, DAV College Managing Committee, Chitr Gupt

Road, New Delhi-110055 (ii) the Principal, MCM DAV Senior Secondary School, Baghani (Nurpur), District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged by Principal of DAV Sr. Secondary Public School, Nurpur in the capacity of the driver since the year 2012 on consolidated salary basis and he continued to work without any break till 7.8.2019. During this period the work and conduct of the petitioner was satisfactory and upto the mark and he never gave any chance for any allegation of misconduct by the institution or competent authority. The petitioner completed more than 240 days in each calendar year from the year 2012 to 7.8.2019 and hence he is deemed to cover under the definition of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). The management however did not pay one month's salary in lieu of notice period as required under Section 25-F (a) of the Act nor paid any retrenchment compensation to the petitioner at the time of his unlawful termination. He was never served any charge sheet in accordance with the law for his alleged misconduct and no domestic inquiry was conducted against him. It is alleged that respondents have violated the principle of natural justice and also the principle of 'last come first go' whereas persons junior to the petitioner were employed and retained in service after the unlawful termination of the petitioner. According to petitioner he was the member of union namely Himachal Pradesh Private School Evem Karamchari Sangh, Branch Office MCM DAV, Sr. Secondary Public School Baghni and the Pradhan/Secretary of DAV Sr. Secondary Public School Baghni and had served a demand notice to the respondent vide demand charter under Section 2-K of the Industrial Disputes Act, 1947 wherein different types of demands raised by the karamchari sangh including regularization of services of persons after completion of five years of continuous service. During pendency of the general demand of the union before Conciliation Officer-cum-Labour Inspector, Nurpur the principal *i.e.* respondent no.2 deliberately terminated the services of petitioner violating the provisions of Section 33 Clause 2 (b) of the Act. It is alleged that the act of respondents amounted to unfair labour practice and the petitioner remained unemployed since the date of his termination. The petitioner has prayed that the order of illegal termination dated 8.8.2019 may be set aside and his services be reinstated with full back wages, seniority and continuity in service and to all consequential benefits.

3. In reply to the claim petition preliminary objections qua concealment of material facts and maintainability etc. have been raised. On merits, it is asserted that the petitioner was driver of bus No.HP-38B-8308 but he was appointed for 89 days *w.e.f.* 4.4.2019. The petitioner had done gross misconduct and negligence during job period as he moved to Pathankot to bring bus of school without cleaner and without informing appropriate authority. Proper procedure for conducting inquiry after giving show cause notice to petitioner was followed by respondents. After completion of inquiry, on the basis of report submitted by inquiry committee the competent authority being satisfied passed order of termination of services of the petitioner after recording the statement of witnesses. The above mentioned bus was moved from Pathankot to Baghni at 5 PM from Pathankot (as per GPS fitted in the bus) stopped the bus at Kandwal about 6.21 PM and restarted at 8.00 PM. After that petitioner reached at Jassur around 8.20 PM and back to Kandwal without any work and without informing the appropriate authority, the principal and three teachers were deputed to look into the matter of accidental bus on the same day. The bus no.HP-38-8308 found at Jassur around 9 PM and petitioner was found missing from his bus. LMC meeting was held on 2.8.2019 at 2 PM in the office of principal under chairmanship of Shri Prabhat Singh, Manager of LMC in which the inquiry committee was constituted to inquire into the matter. On 2.8.2019 the petitioner was served show cause notice which he refused to receive in the morning but later on received the same. The reply submitted by petitioner was found to be fake and inappropriate as well as unjustified. Inquiry

committee conducted the inquiry and found the petitioner guilty of gross misconduct and negligence vide report dated 4.8.2019. The Principal issued one month's advance notice to the petitioner which he did not receive thereafter this notice was sent to the petitioner by post and one month advance salary was deposited in his account. According to respondent the procedure adopted by the school management was adequate and proper for removing the worker from service. It is also asserted that petitioner was never a regular employee of the respondent, hence the provisions of Section 25 of Industrial Disputes Act, 1947 were not applicable to him. It is also alleged that there were many complaints of gross misconduct against the petitioner and FIR was also registered against him thus the entire proceedings done by school authorities were in accordance with the provisions of law and they have concluded misconduct on the part of the petitioner and his services were terminated. The termination of services of petitioner is asserted to be legal and valid. Other averments made in the petition are denied and it is prayed that the petition may be dismissed.

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

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

1. Whether the termination of services of the petitioner w.e.f. 08-08-2019 by the respondents is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? . . *OPP*.

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

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

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

5. Relief

6. In order to prove his case the petitioner has produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the claim petition. Petitioner also examined Shri Sudershan Singh as PW2 and proved on record copies of appointment letter of petitioner Ex. PW2/A-1 to Ex.PW2/A-5, copy of salary record Ex. PW2/B and copy of service bye-laws Ex. PW1/C.

7. Respondents have examined Mr. M.R. Rana, Principal, MCDAV School Baghni, Tehsil Nurpur, District Kangra, H.P. by way of affidavit Ext. RW1/B. He has also produced in his evidence various documents i.e. copy of GPS record Mark-A to Mark-E, copy of charge-sheet Mark-F, copy of cheque dated 8.8.2019 Mark-G, copy of letter dated 24.5.2019 Mark-H, copy of letter dated 15.5.2019 Mark-J, copy of letter dated 15.8.2019 Mark-K, copy of letter dated 13.5.2019 Mark-L, copy of letter dated 5.4.2019 Mark-M, copy of office order dated 1.4.2019 Mark-N, copy of letter dated 16.4.2019 Mark-P, copy of letter dated 10.12.2019 Mark-Q, copy of affidavit dated 25.3.2014 Mark-R, copy of office order dated 17.11.2018 Mark-S, copy of letter dated 5.4.2019 Mark-T, copy of office order dated 31.3.2018 Mark-U, copy of office order dated 31.3.2017 Mark-W, copy of letter dated 10.9.2015 Mark-X, cop of office order dated 11.7.2014 Mark-Y, copy of letter dated 8.8.2019 Mark-Z, copy of proceedings dated 2.8.2019 Ex. R1, copy of inquiry committee Ex.R2, copy of inquiry report Ex.R3, copy of letter dated 8.8.2019 Ex. R4, copy of letter dated 2.8.2019 Ext. R5, copy of application dated 2.8.2019 Ex. R6 and copy of FIR Ex. R7.

8. I have heard the learned AR/Counsel for the petitioner as well as learned counsel for the respondents at length and records perused.

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

Issue No.1	:	Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Relief	:	Claim Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner has contended that he had worked in the capacity of driver with the respondents from 2012 to 7.8.2019 and completed 240 days of work in each calendar year of his service. The respondents have not expressly denied the employment of petitioner but it is pleaded that petitioner was appointed on 89 days basis *w.e.f.* 4.4.2019. RW1 Mr. M.R. Rana, the Principal of MCM DAV School has admitted that petitioner was appointed as a driver in the year 2012. He asserts that petitioner had not worked in the year 2014 but admits that no such fact find mention in their pleadings. He admits that the petitioner had completed 240 days of work from 2012 to 2013 and from 2015 to 8.8.2019 in each calendar year. The definition of workman as per Industrial Disputes Act, 1947 has as follows:—

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

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

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

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

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

11. It is evident that petitioner had worked from 2012 to 2015 and thereafter continuously worked from 2015 to 2019 with the respondents. The appointment letter Exts. PW2/A1, PW2/A-2, PW2/A-3 to Ext. PW2/A-5 and the pleadings of the respondents proved that the petitioner was being appointed for fixed 89 days only but he had continuously worked for the time period as admitted by RW1 Mr. M.R. Rana, in his cross-examination. The breaks on the part of respondents to appoint the petitioner for a fixed period of 89 days and thereafter continuously take services of the petitioner for a period of four to five years shows that the contract for period of 89 days was executed merely to deprive him from the benefits of regularization of services and other benefits involving continuity of service. In accordance with the entry no.10 of Schedule Vth of Industrial Disputes Act, 1947 describes unfair labour practice as follows:—

> "10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

12. The continuous service of the petitioner from 2015 to 8.8.2019 makes him entitled for all benefits provided under the Industrial Disputes Act,1947.

13. The respondents have further alleged that petitioner had committed gross misconduct and negligence during his job period. The school management adopted proper procedure, conducted inquiry on the basis of inquiry report competent authority ordered termination of petitioner. The statement of witnesses was recorded, show cause notice was served and inquiry committee was constituted. The reply of petitioner to the show cause notice was found to be in appropriated and the findings of the inquiry committee were submitted before the Principal. Thereafter one month's notice was issued by way of post to the petitioner and one month's pay in lieu of notice period was also deposited in his accounts. According to respondents the services of the petitioner were terminated after holding a due and proper inquiry. It is also the case of the respondents that the petitioner was not a regular employee as well as the provisions of Section 25 of the Industrial Disputes Act, 1947 were not applicable. It is pertinent to peruse that the salary bill for the month of May, 2017 Ex. PW2/B which describes the drivers employed by respondents school as daily wagers. It appears that the contract for 89 days which was being executed was merely sham and to prevent the workers from getting any benefits of continuous services with the respondents school. As already discussed above the petitioner considering his length of employment, mode of payment of wages was a workman within the meaning of Industrial Disputes Act, 1947 and his services were fully within the purview of Section 25-F of the Act. Hon'ble Surpeme Court in **Nar Singh Pal *vs.* Union of India & Ors.** has laid down in para no.5 and 6 as follows:—

> 5. The reasoning of the Tribunal is fallacious. If an order had been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the appellant arbitrarily by paying him the retrenchment compensation. The observation of the Tribunal that the respondents had a choice either to hold a regular departmental enquiry or to terminate the services by payment of retrenchement compensation is wholly incorrect.
>
> 6. "The appellant, no doubt, was a casual labour but as observed by the Tribunal, he had acquired temporary status with effect from 1-10-1989. Once an employee attains the 'temporary' status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. A perusal of the Impugned order by which the services of the appellant were terminated

indicates that since the appellant had beaten one Mahender Singh with iron rod and had also bitten him with teeth on 20-4-1992 at 8,00 p.m. while the said Mahender Singh was on duty as Gateman, Tax Bhawan, Agra, therefore, his services were terminated with immediate effect. Thus the services were terminated on account of the allegation of assault made against the appellant. This Court on 24-1-2000 passed the following order:

Learned counsel appearing for the respondents is granted six weeks' time to seek instructions whether regular departmental proceedings were taken in this matter or not".

14. Thus even in the case of temporary employees the termination on ground of misconduct must be carried out after holding due process of law and compliance of principle of natural justice. The Hon'ble Apex Court in **Sur Enamel And Stampingworks (P) Ltd. vs. Their Workmen, AIR 1963 SC 1914** has held as follows:—

"In support of the appeal against this order Mr. Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic' tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi. Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were., confronted with the reports of the supervisor and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the inquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely." In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry it has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless,

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined--ordinarily in the presence of the employee-in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,

(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the

persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justifies in entirely ignoring the conclusion reached by the domestic Tribunal".

15. RW1 Mr. M.R. Rana has admitted that Mark-Z1 was not sent on the address of the petitioner through registered post. He is unaware of the rules of DAV School on the basis of which LMC is constituted. He himself was appointing authority and also the member of inquiry committee which prepared the report against the petitioner. He admits vide Ex. R2 that petitioner was not called to put his defence before the inquiry proceedings nor the petitioner was supplied with any report of inquiry. Though he states vide Ex. R8 all the documents were given to the petitioner but he admits that no charge-sheet was prepared and supplied. He admits that internal inquiry was conducted but no domestic inquiry was carried out. Petitioner was not supplied list of witnesses to be examined in the inquiry proceedings nor given any opportunity to cross-examine the witnesses.

16. The record of the inquiry conducted against the petitioner reveals that only the preliminary inquiry was conducted without following the principle of natural justice without affording any opportunity to the petitioner to cross-examine the witnesses who were likely to depose against him and the services of the petitioner were dispensed with in violation of Section 25-F of the Act. Though there is alleged that FIR was registered against the petitioner there is no record of any criminal proceedings culminating into conviction. The termination of petitioner is in flagrant violation of the Industrial Disputes Act, 1947 and without following due process of law. RW1 Mr. M.R. Rana admits that no compensation has been given to the petitioner under Section 25-F of the Act. It has also been admitted on behalf of respondents RW1 Mr. M.R. Rana that certain conductors have been appointed after the termination of the petitioner and it is also not expressly denied that various drivers have also been appointed though on outsource basis. The above conduct of the respondents clearly shows that while terminating the services of the petitioner they have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. The issue no.1 is accordingly decided in the favour of the petitioner.

Issue No.2

17. While deciding issue no.1 above it has been proved that the services of the petitioner was terminated without following due process of law and in violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. In the light of these circumstances the petitioner is held entitled for reinstatement to his services on daily wage basis from 8.8.2019 along-with seniority and continuity in service and consequential benefits and compensation of Rs.1,00,000/- in lieu of back wages. Hence this is issue no.2 is decided accordingly.

Issue No. 3

18. The claim of the petitioner was challenged on the ground that petitioner did fall within the definition of a workman in the provisions of Industrial Disputes Act, 1947. Facts to the contrary appeared from the service record of the petitioner with the respondents, hence the claim petition was maintainable. This issue is decided in favour of the petitioner.

Issue No. 4

19. It is alleged by the respondents that the services of the petitioner were terminated on gross misconduct and after conducted an inquiry proceedings against him. Petitioner had pleaded

that he was never charge-sheeted nor the principle of natural justice were complied with while inquiry proceedings were initiated by the respondents. The petitioner has not suppressed any material facts which would disentitle him for the relief. Hence this issue is decided in the favour of petitioner.

Relief

20. In view of my discussion on the issues no. 1 to 4 the claim petition succeeds and is partly allowed. The respondents are directed to reinstate the services of the petitioner *w.e.f.* 8.8.2019 along-with seniority and continuity in service and consequential benefits and compensation of Rs.1,00,000/- in lieu of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 111/2021

Date of Institution : 22.11.2021

Date of Decision : 14.11.2024

Shri Sajjan Singh s/o Shri Sunder Singh, r/o Villge Pachan, P.O. Nagani, Tehsil Nurpur, District Kangra, H.P. . . *Petitioner*.

Versus

1. The Chairman/Secretary, DAV College Managing Committee, Chitr Gupt Road, New Delhi-110055.

2. The Principal, MCM DAV Senior Secondary Public School, Baghani Tehsil Nurpur, District Kangra, H.P. . . *Respondents*.

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

For the Petitioner : Sh. Vivek Vashisth, Ld. Adv.

For Respondent(s) : Sh. M.G. Thakur, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner.

> "Whether the termination of services of Shri Sajjan Singh s/o Shri Sunder Singh, r/o Village Pachan, P.O. Nagani, Tehsil Nurpur, District Kangra, H.P. *w.e.f.* 10-08-2020 vide letter dated 14-08-2020 by (i) the Chairman/Secretary, DAV College Managing Committee, Chitr Gupt Road, New Delhi-110055 (ii) the Principal, Senior Secondary Public School, Baghani, Tehsil Nurpur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?"

2. The brief facts as stated in the claim petition are that the petitioner was appointed in MCM DAV Public School Baghni, Tehsil Nurpur, District Kangra, H.P. in the year 2015 on the salary of Rs.4500/- per month and he continued to serve in the school till the year 2020. In the year 2020 he was receiving a salary of Rs.10,000/- per month. The claimant was also a member of Employment Provident Fund which was deposited in his account No.164324. It is submitted that claimant was performing his services since July, 2016 continuoulsy having completed 240 days in each calendar year *i.e.* 2017, 2018, 2019 till August, 2020. He had attained status of regular employee and was also entitled for regularization as per provisions of law. The services of claimant were however illegally and arbitrarily terminated in August by the management orally. All other employees were allowed to serve in the institution and they were receiving their salary from the institution. No opportunity was provided to the claimant before termination of his services. No notice was issued to him. In the light of these fact and circumstances the claimant seeks relief to the effect that his termination may be declared as illegal, arbitrary and against the principle of natural justice. Respondents be directed to reinstate him as a peon in the institution on the salary as per provisions of law and also provide him back wages from August, 2020 till the joining on the same post.

3. In reply to the claim petition preliminary objections qua maintainability, suppression of material facts etc. have been raised. On merits, it is asserted that the claimant was only a contractual/temporary employee for fixed period and fixed salary. Every time whenever the claimant was re-engaged on same basis with fresh appointment/contract and a separate memorandum of engagement on the contractual/temporary basis was issued to the claimant. He also signed a declaration to this effect. An office order for relieving after academic session was served to the claimant which was also served to other 21 persons in August, 2020. Since the appointment of the claimant was merely on contractual/temporary basis. The monthly wages were enhanced from time to time in accordance with minimum wages at the time of termination. He was receiving Rs.10,000/- per month. Since he was working on temporary basis there is no question of completing 240 days in a calendar year. Other averments and allegations which have been made in the claim petition are denied and it is asserted that due to Covid -19 pandemic and the decision of institution to discontinuing the temporary/adhoc employment were conveyed to the applicant hence there was not any violation of the Industrial Disputes Act, 1947 or principle of natural justice.

4. In rejoinder preliminary objections raised in the reply were denied facts stated in the petition are reasserted and reaffirmed.

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

1. Whether the termination of services of the petitioner w.e.f. 10-08-2020 by the respondents is violation of the provisions contained under the I.D. Act, 1947, as alleged? . . *OPP*.

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

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

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

5. Whether the petitioner has no cause of action to the present case, as alleged? . . *OPR*.

6. Relief

6. Petitioner in order to prove his case examined himself by way of affidavit Ext. PW-2. He also produced on record appointment letters Ex. P4 and P5. He also examined PW1 Shri Sudershan Kumar, UDC c/o Principal Sr. Sec. School Baghani, Tehsil Nurpur, District Kangra, H.P. who produced on record salary bill for June , 2020 Ex. P1, salary bill for July, 2020 Ex. P2 and salary bills for August, 2020 Ex. P3. He also described EPF and attendance.

7. Respondents have examined Mr. M.R. Rana, Principal, MCDAV School Baghni, Tehsil Nurpur, District Kangra, H.P. by way of affidavit Ext. RW1/A. He has reiterated the facts and averments made in the reply and produced on record copy of appointment and relieving orders Ex. R1 to R12 and copy of letter dated 14.8.2020 Ex. R13.

8. I have heard the learned AR/Counsel for the petitioner as well as learned counsel for the respondents at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the above issues are as follows:—

Issue No.1	:	Yes
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Relief	:	Claim Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. The petitioner has asserted that he was in continuous employment with the respondents from the year 2016 upto August, 2020. He also asserts that he had completed 240 days of work in

each calendar year including the 12 months preceding the date of his alleged termination. RW1 Shri M.R. Rana has admitted in his cross-examination that petitioner had worked continuously from 1.8.2015 to 10.8.2020. He categorically admitted that the petitioner used to work for whole year. He has asserted that there was contract of 89 days with the petitioner. He has admitted that the petitioner was appointed as per the procedure after taking approval and continuously worked from 1.8.2015 to 10.8.2020. The definition of workman under the Industrial Disputes Act, 1947 as follows:—

> "2(s) ["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- *[Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]*
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison, or
>
> (iii) who is employed mainly in a managerial or administrative capacity, or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

11. It is asserted on behalf of the petitioner that despite being continuous service he was terminated without following the procedure under the Industrial Disputes Act, 1947 and in violation of the provisions of Section 25-F of the Industrial Disputes Act. Section 25-B clearly provides the definition of continuous service. In accordance with the provisions of the Act the petitioner had worked for almost four years and continuously worked throughout the year even in the 12 months preceding the date of his disengagement. This clearly implies that he had completed the period of one year of continuous service as provided under Section 25-F of the Industrial Disputes Act, 1947. It is pertinent to mention here that description of workman under the provisions of Sections 25-B and 25-F of the Industrial Disputes Act do not made any distinction between the employee who has been appointed only for short period of time or who has been appointed without any time limit. In-fact the entry no.10 of Vth Schedule describes unfair labour practice as follows:—

> "To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

12. It is the contention of the respondents that the petitioner was employed only for fixed period of 89 days and the memorandum Ex. P4 and P5, R1, R2, R3, R7 make a declaration to the effect that the petitioner was being employed on fixed of 89 days on a consolidated salary. The respondents have asserted that they were only employing the petitioner for a fixed period of time and the payment of salary was as per the minimum wages prevalent. Though the fixed tenure contracts/appointment letters have been produced on the case file these documents appear to be in

clear violation of the provisions of the Industrial Disputes Act amounting to unfair labour practice on the part of the respondents. On the other hand, it has been clearly admitted that the petitioner remained in continuous service from the year 2016 till August, 2020 which implies that the termination of petitioner should have been in compliance with Section 25-F of the Industrial Disputes Act. The record clearly reveals that the respondents have not issued any notice in the prescribed manner upon the appropriate authority informing them about termination of the petitioner. The respondents have not paid at the time of retrenchment any amount of retrenchment compensation in accordance with the provisions of Section 25-F (a) and (b) of the Industrial Disputes Act, 1947. Thus it is proved from the overwhelming evidence that termination of the petitioner by the respondents on 10.8.2020 was in violation of the provisions contained in the Industrial Disputes Act, 1947. The issue no.1 is accordingly decided in the favour of the petitioner.

Issue No.2

13. It has been proved from the evidence on record that while disengaging the services of the petitioner, the respondents have violated the mandatory provisions of the Industrial Disputes Act. In these circumstances it is held that the termination of the services of the petitioner is illegal, arbitrary and against the principle of natural justice. Respondents are directed to reinstate the services of the petitioner as Peon in their institution. He is also held entitled for the lump sum compensation to the tune of Rs.1,00,000/- in lieu of back wages. Hence this issue is decided accordingly.

Issues No. 3,4 & 5

14. The onus of proving these issues are on the respondents. The maintainability of the claim was primarily challenged on the ground that employment of the petitioner was on contractual basis for a fixed period. It already appeared from the evidence on record that the breaks given by the respondents and deploying the petitioner four years on temporary contracts amounted to unfair labour practices and they had dispensed with his services without complying with the mandatory provisions of the Industrial Disputes Act. There is nothing on record to show that the petitioner had suppressed material facts from this court and being a workman who had worked continuously for 240 days in each calendar months of his employment. He has enforceable cause of action to file the present claim. Hence all these issues are decided in the favour of the petitioner.

Relief

15. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. The respondents are directed to reinstate the services of the petitioners along-with seniority and continuity in service and consequential benefits and compensation of Rs.1,00,000/- in lieu of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 90/2021

Date of Institution : 13.7.2021

Date of Decision : 14.11.2024

Shri Subhash Chand s/o Shri Waryam Singh, r/o V.P.O. Palarhri, Tehsil Nurpur, District Kangra, H.P. . . *Petitioner*.

Versus

1. The Chairman/Secretary, DAV College Managing Committee, Chitr Gupt Road, New Delhi-110 055.

2. The Principal, MCM DAV Senior Secondary Public School, Baghani (Nurpur) District Kangra, H.P. . . *Respondents*.

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

For the Petitioner : Sh. N.L.Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent(s) : Sh. M.G. Thakur, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner.

> "Whether the termination of services of Shri Subhash Chand s/o Shri Waryam Singh, r/o V.P.O. Palarhri, Tehsil Nurpur, District Kangra, H.P. *w.e.f.* 08-08-2020 by (i) the Chairman/Secretary, DAV College Managing Committee, Chitr Gupt Road, New Delhi-110055 (ii) the Principal, MCM DAV Senior Secondary School, Baghani (Nurpur), District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that petitioner was engaged by Principal, DAV Sr. Secondary Public School, Nurpur in the capacity of driver in the year 2014 on the consolidated salary and he worked continuously till 6.8.2019. During this period his work and conduct was satisfactory and he had not given any chance for his alleged misconduct nor any notice/charge-sheet was ever served to him by the institution. According to petitioner he completed 240 days in each and every calendar year from the date of his engagement in the year 2014 to 6.8.2019 as well as 12 months preceding the date of unlawful termination i.e. 7.8.2019. It is asserted that the petitioner was covered under definition of continuous service under Section 25-B of the Industrial Disputes Act, 1947. The respondents however did not pay one month salary in lieu of notice as provided under Section 25-F (a) of the Industrial Disputes Act nor paid retrenchment compensation to the petitioner for his unlawful termination as mandatory requirement

of Section 25-F (b) of the Industrial Disputes Act, 1947. It is also asserted that respondents have not complied with provisions of Section 25-F (c) of the Industrial Disputes Act. It is further alleged that no charge-sheet was ever served under the service bye-laws/service rules regarding allegations of misconduct and no domestic inquiry was conducted by the respondents. The respondents not only violated the provisions of the Industrial Disputes Act but also violated the principle of 'last come first go' whereas persons junior to the petitioner namely Sanjeev Kumar, Balkar Singh, Subhash Chand, Darshan Singh, Anil Pathania, Chuni Lal, Imram Khan, Sanju Singh and Sohan Singh were retained in service even after the termination of the petitioner. Petitioner was never granted opportunity of re-employment. The petitioner was a member of union namely Himachal Pradesh Private School Evem Karamchari Sangh, Branch Office MCM DAV, Sr. Secondary Public School Baghni and the Pradhan/Secretary of DAV Sr. Secondary Public School Baghni had served a demand notice to the respondent vide demand charter under Section 2-K of the Industrial Disputes Act, 1947. Various types of demands were raised by the karamchari sangh including regularization of services. Dispute was not concluded by the Conciliation Officer-*cum*- Labour Inspector and Deputy Labour Commissioner referred the dispute to this court *vide* notification dated 7.1.2020 and which is registered as Reference No.13/2020 and pending adjudication. It is further alleged that during pendency of the general demand of the union before Conciliation Officer-*cum*-Labour Inspector, Nurpur respondent no.2 Mr. M.R. Rana, Principal of institution deliberately terminated the services of the petitioner *w.e.f.* 7.8.2019 vide letter No.DAV/PSB/6103 dated 8.8.2019 but the permission for termination *w.e.f.* 7.8.2019 were not obtained from Labour Inspector-cum-Conciliation Officer, Nurpur. It is further alleged that the respondent no. 2 had adopted illegal tactics to not to regularize services of the petitioner after completion of five years and due to this reason the services of petitioner was unlawfully terminated without prior permission of respondent no.1. The petitioner has prayed that his illegal termination on 7.8.2019 may be set aside and respondents be directed to reinstate his services with all consequential benefits.

3. In reply respondents have raised preliminary objections qua suppression of material facts and the claim being frivolous and abuse of process of law. On merits, it is asserted that Subhash Chand was a driver of bus no. 9893 and he was appointed for 89 days *w.e.f.* 4.4.2019. It is alleged that Subhash Chand had committed gross misconduct during period of his job on 1.8.2019. He moved to Pathankot to bring bus of school without cleaner and without informing appropriate authority. The above mentioned bus was moved from Pathankot to Baghni at 5 PM from Pathankot (as per GPS fitted) in the bus stopped the bus at Kandwal about 6.21 PM and restarted at 8.00 PM after that petitioner reached at Raja-ka-Bag (Kandwal) around 8.04 PM. It is alleged that petitioner ran away from the accident spot without informing school. The incident was informed telephonically by anonymous person at 8.40 PM. Principal of school deputed three teachers of school to handle the situation on the spot and take necessary action as per norms. An FIR was also lodged mechanical report was carried out by HRTC Department which shows that bus had no technical defect. A LMC meeting was held on 2.8.2019 at 2 PM in the office of principal under the Chairman Shri Prabhat Singh, Manager and inquiry committee was constituted on the same day *i.e.* on 2.8.2019. Principal issued a show cause notice to Subhash Chand driver for his reply and explanation. Subhash Chand did not reply to the show cause notice and thereafter inquiry was conducted and found the petitioner guilty of gross misconduct and negligence vide report dated 4.8.2019. The Principal issued one month's advance notice to the Subhash Chand which he refused to receive. One month's advance notice was sent to the petitioner by post on 8.8.2019 and one month's advance salary in lieu of one month's notice was deposited in the saving account of the petitioner. He was terminated from school *vide* letter No. DAV/PSB/6104 dated 8.8.2019. According to respondents the proper inquiry was conducted against petitioner Subhash Chand and hence his termination is not in violation of the provisions of any Industrial Disputes Act. It is further asserted that there are so many complaints against the petitioner for gross misconduct which caused economic loss to the school authority. Many oral and written complaints were also filed in the school alleging that he drives the bus negligently and rashly. Respondents claimed that the

termination of petitioner was not arbitrary and unjustified but was done in accordance with rule and procedure and after proper inquiry. It is prayed that the claim deserves to be dismissed.

4. In the rejoinder the preliminary objections were denied, facts stated in the claim petition were reasserted. It was asserted that the petitioner was unlawfully terminated without following the procedure of the Industrial Disputes Act, 1947 as well as service bye-laws of institution or Model Standing Order Act, 1946 applicable to the institution of the respondents.

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

1. Whether the termination of services of the petitioner *w.e.f.* 08-08-2019 by the respondents is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? . . *OPP.*

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

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

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

5. Relief

6. In order to prove his case the petitioner has produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the claim petition. He also examined Shri Sudershan Singh as PW2 who has proved on record copies of appointment letters Ex. PW2/A-1 to Ex. PW2/A-4, copy of salary record Ex. PW2/B and copy of service bye-laws Ex. PW1/C.

7. Respondents have examined Mr. M.R. Rana, Principal, MCDAV School Baghni, Tehsil Nurpur, District Kangra, H.P. by way of affidavit Ext. RW1/B. H also produced on record copy of LMC proceeding Ex.R1, copy of inquiry committee Ex. R2, copy of inquiry report Ex. R3, copy of accident information Ex. R4, copy of relieving order Ex. R5, copy of payment in bank account Ex. R6, copy of information by TPT Manager, Ex. R7, copy of application of conductor Ex. R8, copy of cheque No.274936 Ex. R9, copy of photographs Ex. R10, copy of one months' notice Ex. R11, copy of receipts dated 2.8.2019 Ext. R12, copy of show cause notice Ex. R13, copy of application by petitioner Ex. R14, copy of application for advertisement Ex. R15, copy of office order dated 31.3.2017 Ex. R16, copy of office order dated 31.3.2018 Ex. R17, copy of information dated 12.12.2018 Ex. R18, copy of letter dated 26.12.2018 Ex. R19, copy of appointment dated 5.4.2019 Ex.R20, copy of letter dated 13.5.2019 Ex. R21 and copy of office order dated 1.4.2019 EX.R22.

8. I have heard the learned AR/Counsel for the petitioner as well as learned counsel for the respondents at length and records perused.

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

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

Issue No.3	:	No
Issue No.4	:	No
Relief	:	Claim Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner has asserted in his affidavit that he had continuously worked with the respondents as a driver from 2014 till 6.8.2019. He alleges that his services were abruptly terminated without any due process and compliance of provisions contained in Section 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Respondents on the other hand have not denied that the petitioner was employed as driver. RW1 Mr. M.R. Rana had admitted that the petitioner was appointed as per the procedure after due approval. He asserts the petitioner was appointed for 89 days on the policy of contractual employment of 89 days at that time. He however clearly admits that the petitioner had worked from January, 2014 to 6.8.2019 continuously. This admission on the part of the respondents clearly shows that the petitioner falls within the definition of workman under the Industrial Disputes Act, 1947. It is also clear that petitioner has completed one year continuous service preceding the date of his disengagement in accordance with the mandatory provisions of Sections 25-B and 25-F of the Industrial Disputes Act. Certain appointment letters have been produced on the case file which show that petitioner was being appointed time and again for a fixed period of 89 days. Perusal of document Ex. PW2/B which is the salary bill of respondents school shows that the payment was being made to the petitioner along-with other drivers describing the nature of appointment as daily wages. It appears that the petitioner as well as other drivers mentioned therein was being paid as daily wager. It is clear that the petitioner worked continuously for 12 months prior to date of his disengagement. The provisions of Sections 25-B, 25-F, 25-G and 25-H do not make any distinction between contractual employees appointed only for a limited period of time or the workmen who has been appointed without any fixed time limit.

11. In accordance with the entry no.10 of Vth Schedule of the Industrial Disputes Act, 1947 unfair labour practice is mentioned, which reads as follows:—

> "To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

12. The petitioner was also being appointed for fixed period at that time and was continuously performing his services for 4 years at a length. This means that while providing contractual employment for a fixed period of 89 days respondents were carrying out unfair labour practices in accordance with the Vth Schedule of the Industrial Disputes Act,1947.

13. The second contention which has been raised on behalf of the respondents with regard to the disengagement of the petitioner is that he was found guilty of gross misconduct during the period of his employment. It has been stated on oath by RW1 Mr. M.R. Rana that there were many complaints against him and inquiry committee found gross misconduct to have been committed vide report dated 4.8.2019. He further alleges that petitioner's gross misconduct caused huge economic loss to the school consequently the services of the petitioner were terminated after a show cause notice, inquiry proceedings, inquiry report and payment of one month's salary in lieu of

notice. Thus according to respondents the provisions of the Industrial Disputes Act, 1947 were followed. It is important to peruse the cross-examination of RW1 Mr. M.R. Rana who has denied that they have not given any charge-sheet to the petitioner. However he admits that no such documents are produced in the case file. He subsequently asserts that a show cause notice was issued and thereafter an inquiry was conducted and petitioner's services were terminated. He has admitted that institution had regular and adhoc contractual employees. In total there are 70 employees and again stated that by including outsource employees more than 100 employees working in the institution. The Industrial Employment Standing Orders, 1946 is applicable where there are more than 50 workmen employed. RW1 Mr. M.R.Rana has further admitted that he himself was appointing authority of the petitioner. He is unsure that whether any domestic inquiry or departmental inquiry was conducted though he asserts that the institutional inquiry was carried out. He admits that there is no participation of petitioner in the proceedings of the inquiry. He further admits that the inquiry report Ex.R3 was not supplied to the petitioner. He further admits that there is no record of any registered post vide which Ex.R4 was sent to the petitioner. As argued by the learned counsel/AR for the petitioner that there is no record of any inquiry after delivery of charge-sheet to the petitioner. There is no record of any list of witnesses being supplied to the petitioner or that an opportunity to cross-examine the witnesses was ever afforded to him. There was no record of inquiry to show that the petitioner had also afforded an opportunity to lead evidence in his defence. The Hon'ble Apex Court in **Sur Enamel And Stampingworks (P) Ltd. *vs.* Their Workmen, AIR 1963 SC 1914** has held as follows:—

> "In support of the appeal against this order Mr. Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic' tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi. Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were., confronted with the reports of the supervisor and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the inquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely." In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry it has been laid down by this Courtin a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless,
>
> (i) the employee proceeded against has been informed clearly of the charges levelled against him,(ii) the witnesses are examined--ordinarily in the presence of the employee-in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the

enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justifies in entirely ignoring the conclusion reached by the domestic Tribunal".

14. It is further held by the Hon'ble Apex Court in **The Provincial Transport Service *vs.* State Industrial Court, 1963 AIR 114** that a domestic inquiry are mandatory and disengaging the employees without conducting a fair and just domestic inquiry is against the principle of natural justice.

15. As per entry no. 5 Clause (f) of Vth Schedule of the Industrial Disputes Act, 1947 a workman is dismissed or discharged "in utter disregard of the principles of natural justice in the conduct of domestic inquiry or with undue haste" constitute unfair labour practice.

16. In the circumstances to the present case also the respondents have indulged in unfair labour practice by employing the petitioner and others for a fixed period of contractual service for number of years continuously with a motive to deprive them the benefits of continuous service in future but they also dispensed with the services of the petitioner without following due process. The record which has been produced on the case file including the statement of RW1 Mr. M.R. Rana shows that he being appointed by authority was also the member of inquiry committee who prepared the inquiry against the petitioner. No charge-sheet was prepared or duly served on the petitioner. There is no evidence to show that the petitioner was duly served and failed to appear before the inquiry proceedings where the witnesses was examined by inquiry committee. It appears that respondents have conducted the inquiry under haste merely with an intention to retrench the services of the petitioner.

17. It is pertinent to mention here that there is no record of criminal proceedings against the petitioner place on the case file. No witnesses appeared to have been cross-examined during inquiry proceedings neither any opportunity to examine witnesses was afforded to the petitioner. It is also clear that the petitioner being workman and his services were terminated without following the mandatory provisions of Sections 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in the favour of petitioner.

Issue No. 2

18. It has been proved from overwhelming evidence that the termination of petitioner was illegal hence the respondents are directed to reinstate the services of the petitioner along-with seniority and continuity in service from 7.8.2019 with all consequential benefits. The petitioner is also granted compensation to the sum of Rs.1,00,000/- in lieu of back wages. Hence this issue is decided accordingly.

Issue No.3

19. The maintainability of claim petition was challenged on the ground that petitioner was contractual/temporary employee. Facts to the contrary appeared from record which clearly show that petitioner had worked with the respondents continuously for 4 years hence the claim petition is maintainable. This issue is decided in the favour of the petitioner.

Issue No.4

20. The petitioner is alleged to have suppressed the facts that he was terminated on account of his gross misconduct. The record however reveal that the respondents have not acted in

accordance with the principle of natural justice and violated with the Industrial Disputes Act and Model Standing Order, 1946 despite there being more than 100 workmen in their institution. It is also asserted by the petitioner in the claim petition that respondents have not acted in accordance with principle of natural justice neither followed due process of law hence petitioner has not suppressed any material facts from this court. Hence issue no.4 is decided in the favour of the petitioner.

Relief

21. In view of my discussion on the issues no. 1 to 4 the claim petition succeeds and is partly allowed. The respondents are directed to reinstate the services of the petitioners along-with seniority and continuity in service and consequential benefits and compensation of Rs.1,00,000/- in lieu of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 154/2019

Date of Institution : 22.5.2019

Date of Decision : 16.11.2024

Miss Harpreet Kaur d/o Shri Harbans Singh, c/o Shri Rakesh Sharma (State President MMS), Ward No. 9, Santokhgarh, Tehsil Haroli, District Una, H.P. . . *Petitioner*.

Versus

1. The Managing Director, M/s Checkmate Services Pvt. Ltd., r/o Village Kishanpur, P.O. Gurumajra, Tehsil Nalagarh, District Solan, H.P. -174101.

2. The Senior Manager Operations, M/s Checkmate Services Pvt. Ltd., r/o Village Kishanpur, P.O. Gurumajra, Tehsil Nalagarh, District Solan, H.P. -174101.

3. The Managing Director/General Manager, M/s Nestle India Ltd. Tahliwal, Tehisl Haroli, District Una, H.P. . . *Respondents*.

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

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondents No.1 & 2 : Sh. Sunil K. Cholia Ld. Adv. Vice

For Respondent No.3 : Sh. J.P. Singh, Ld. AR

AWARD

The present claim petition has been filed under Section 2-A (2) read with Section 10 (1) of the Industrial Disputes Act, 1947.

2. The petitioner has alleged that HR department of M/s Nestle India had taken the interview of the petitioner in the month of October, 2016 and thereafter the services of petitioner were engaged by Managing Director M/s Checkmate Services Pvt. Ltd. after fulfilling the codal formalities in accordance with company's rules. She was employed in the capacity of receptionist against the permanent post and deputed to join her services with M/s Nestle India Ltd., Tahliwal, District Una, H.P. on the basis of instructions passed by Managing Director, M/s Checkmate Services Pvt. Ltd. The petitioner reported for her duties in the office of M/s Nestle India Ltd. *w.e.f.* 13.10.2016. It is further submitted that *w.e.f.* 13.10.2016 to 27.6.2018 the work and conduct of the petitioner was satisfactory and she had not given any chance for any complaint to the management of M/s Nestle India Ltd. or management of M/s Checkmate Service Pvt. Ltd. She was never served any show cause notice or charge-sheet for any misconduct. The petitioner discharged her duties everyday and reporting to H.R. department of M/s Nestle India Ltd. and worked under the supervision and control of HR department M/s Nestle India Ltd. Payment was only made by the management of M/s Checkmate Services Pvt. Ltd., though M/s Nestle India Ltd. had filled the vacant post including the post of receptionist through M/s Checkmate Services Pvt. Ltd. being a contractor the post of receptionist was a permanent post and not a temporary post. Thus according to petitioner the Contract Labour (Regulation and Abolition) Act,1970 was not applicable to the management company of M/s. Nestle India Ltd, Tahliwal, District Una, H.P. It is alleged that the services of petitioner was unlawfully retrenched by Senior Manager Operation M/s Checkmate Services Pvt. Ltd. on the direction received from M/s Nestle India Ltd. through mail regarding the post of receptionist was abolished vide letter dated 27.6.2018 then the services of petitioner were retrenched on 27.6.2018. No retrenchment notice for three months was given to the petitioner as required under Section 25-N of the Industrial Disputes Act, 1947 nor any retrenchment compensation was ever paid in violation of Section 25-F (b) and (c) of the Industrial Disputes Act. No permission ever obtained by management of M/s Nestle India Ltd. as well as M/s Checkmate Service Pvt. Ltd. from the office of Labour Commissioner of Himachal Pradesh regarding abolition/reduction a post of receptionist and without complying with the provisions of law. The said retrenchment was avoid ab-initio. The petitioner had completed 240 days in each calendar year as well as last 12 months preceding the date of her retrenchment on 27.6.2016. It is also alleged that full and final settlement to the petitioner was not given and on 6.7.2018 amounting to Rs.38755/- made to her through registered letter in violation of Section 25-N of the Industrial Disputes Act read with Section 25-F (b) of the Industrial Disputes Act. The services of the petitioner were retrenched only on the ground that petitioner had joined union of Nestle India Ltd. Contractor Workers Union and thus the conduct of the management amounts to unfair labour practice as per 5th Schedule of the Industrial Disputes Act. The petitioner prayed that the illegal retrenchment/termination order of petitioner dated 27.6.2018 may be set aside and petitioner be reinstated in her service along-with seniority and continuity in service and full back wages.

3. In reply on behalf of respondents no.1 and 2 preliminary objections qua maintainability, cause of action, locus standi, suppression of material facts, estopple, mis-joinder and non-joinder of necessary party and lack of jurisdiction have been raised. On merits, it is asserted that the respondents no.1 and 2 who were service providers of respondent no.3 and petitioner was enrolled in Checkmate Services Pvt. Ltd. She was deputed by respondent no.3 on 13.10.2016. It is denied by respondents that the conduct of petitioner was fully satisfactory and upto the mark though she was verbally advised by supervisory staff who have found guilty in her work. M/s. Nestle India Ltd., Tahliwal had filled some vacant post including receptionist through M/s Checkmate Service Pvt. Ltd. M/s Nestle India Ltd. had intimated the Checkmate Service Pvt. Ltd. by mail that the post of lady handling visitor was not more required as part of restructuring and downsizing. It is denied that the services of petitioner were unlawfully retrenched by Senior Manager, M/s Checkmate Service Pvt. Ltd. as per directions received from M/s Nestle India Ltd. through mail. In-fact respondents no.1 and 2 conducted discussion/counselling and offering her lady security guard job at Nalagarh/Baddi however the petitioner did not accept the same and accordingly her final settlement was carried out. A cheque regarding full and final payment which was accepted by petitioner and money was deposited. Other allegations made in the petition were also denied and it was prayed that petition may be dismissed.

4. In a separate reply of respondent no.3 preliminary objections qua maintainability and suppression of material facts have been raised. On merits, it is asserted that the petitioner has been gainfully employed after the period as mentioned in the claim petition. According to respondent the petitioner was engaged through respondents no.1 and 2 as lady attendant in security department. She was engaged by respondents no.1 and 2 in the factory of the respondent no. 3. Her post was with security service which is noncore activity and therefore within the contractor purview. The petitioner was worked under the supervision and control of respondents no.1 and 2 and respondent no.3 being the principal employer was only to keep vigil of payment salary and contribution of ESIC and EPF under the Contract Labour (Regulation & Abolition) Act, 1970. The petitioner was reporting to the supervisor of respondents no.1 and 2 who was posted in the factory by the respondents no.1 and 2. It is denied that the petitioner was an employee of respondent no. 3 but he was on the role of respondents no.1 and being licence contractor of respondent no. 3. The duties were assigned to the petitioner by respondents no.1 and 2 was purely on security concerned as she had to check every visitor prior every meeting of the visitor so she was worked in the parameters of security services. Other averments made in the petition were denied and it is prayed that the petition may be dismissed.

5. The petitioner had preferred separate rejoinders to the replies on behalf of respondents no.1 and 2 and respondent no.3 wherein the preliminary objections raised in the replies have been denied and facts stated in the petition have been reasserted and reaffirmed.

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

1. Whether the act of termination of services of the petitioner *w.e.f.* 27-06-2018 by the respondents is/was illegal and unjustified, as alleged? . . *OPP*.

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

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

4. Whether the claim petition bad for mis-joinder of the necessary parties, as alleged? . . *OPRs*.

5. Whether petitioner has no cause of action and locus standi to file the present case, as alleged? . . *OPRs*.

6. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . *OPRs*.

7. Whether the petitioner is stopped by her act, conduct, acquiescence and silence to file the present claim, as alleged? . . *OPRs*.

8. Whether this Court has no jurisdiction to entertain and decide the present claim, as alleged? . . *OPRs*.

9. Relief

7. Petitioner in order to prove her case produced her affidavit Ext. PW1/A wherein she has reiterated the facts narrated in the claim petition and also proved on record demand notice Ext. PW1/B, copy of letter dated 27.6.2018 Ext. PW1/C and copy of certificate dated 01.2.2019 Ext.PW1/D.

8. Respondents have examined Shri Paramjit Singh, Manager by way of affidavit RW-1. He has reiterated the facts stated in the reply and produced on record copies of register Ext. R-1, copy of mandays chart Ext. R-2, copy of application form for employment Ext. R-3, copy of appointment letter dated 13.10.2016 Ext. R-4 and copy of licence Ext. R5. Respondent no.3 has examined Shri Amit Kumar Sinha, HOD HR who has reiterated the facts narrated in the reply by way of affidavit RW-2 and also produced on record copy of licence Ext. R-6, copy of registration certificate Ext. R-7, copy of agreement Ext. R-8 and detail of payment Ext. R-9.

9. I have heard the learned ARs/Counsel for both the parties at length and records perused.

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

Issue No.1	:	Yes
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No.6	:	No
Issue No. 7	:	No
Issue No. 8	:	No
Relief.	:	Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

11. The petitioner has alleged that though her services were obtained through respondents no.1 and 2 but the petitioner was actually engaged by respondent no. 3 in the capacity of receptionist. She has clearly mentioned in her claim petition as well affidavit that her interview got conducted by HR M/s Nestle India Ltd. in October, 2016 and thereafter her services were engaged through M/s Checkmate Services Pvt. Ltd. after fulfilling codal formalities. Respondents no.1 and 2 have not expressly denied that petitioner was employed as receptionist. On the contrary respondent no.3 had asserted that the petitioner was on the role of respondents no.1 and 2 and was posted in the factory of respondent no.3 to perform security services. According to respondent no. 3 the petitioner was to work within the parameters of security service which is a noncore activity within the contractor purview. Respondent no. 3 also alleged that the petitioner was reporting to supervisor of respondents no.1 and 2 posted in the factory premises. These pleadings are also admitted by respondents no. 1 and 2.

12. Learned Authorized Representative/Counsel for the petitioner has vehemently argued that the petitioner was actually interviewed by an official of respondent no.3. She was initially not even aware of the fact that she was being paid salary by respondents no.1 and 2 and that the petitioner had worked under direct control and supervision of HR department of respondent no.3. Learned Counsel/AR further argues that though the services of the petitioner were engaged through M/s Checkmate Services Pvt. Ltd. however she was essentially chosen and employed at the instance of respondent no.3. This contention is refuted by the learned counsel for the respondent no.3 who asserts that the petitioner was engaged by respondents no.1 and 2 and worked under direct supervision and control of respondents no.1 and 2. The Hon'ble Supreme Court in **Balwant Rai Saluja and Anr. *Vs.* AIR India Limited and Ors. [2014 (9) SCC 407]** has observed relationship between the employer and the employee as under:—

> "59. In Ram Singh *v.* Union Territory, Chandigarh, (2004) 1 SCC 126, as regards the concept of control in an employer-employee relationship, observed as follows:
>
> "15. In determining the relationship of employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are—who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the "mutual obligations" between them. (See Industrial Law, 3rd Edn., by I.T. Smith and J.C. Wood, at pp. 8 to 10.)"

13. In this case the reply filed on behalf of respondents no.1 and 2 to the demand notice raised by the petitioner is Ext. RX where respondents no.1 and 2 have mentioned Clause (c) not only Miss Harpreet Kaur, but all persons of checkmate services deployed at Nestle India premises at Tahliwal works under direct administrative/professional control of HR department of Nestle India Ltd.

14. There is mention of supervisory staff of respondents no.1 and 2 in the factory of respondent no.3. Pertinent to mention here that no such staff person is examined to prove that all work and function performed by the petitioner was under the supervision and control of such supervisor appointed by respondents no.1 and 2. Section 29 of Contract Labour (Regulation & Abolition) Act, 1970 provides as follows:—

"29. Registers and other records to be maintained.—

(1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed".

15. Pertinent to mention here that the respondent no. 3 being principal employer was under obligation to maintain register and record showing the particular of contract labour and nature of work being performed by them. No such documents have been produced by respondent no. 3 before this court.

16. Ext. R-5 is a duplicate licence granted to M/s Checkmate Services Pvt. Ltd. under Section 12 (1) of Contract Labour (Regulation and Abolition) Act, 1970 as on 16.2.2012 which was valid till 31.3.2017. The date of renewal has mentioned therein is 26.3.2021 which was further extended till 31.3.2022 and so on. The petitioner vide Ext. R-3 was engaged by respondents no.1 and 2 on 13.10.2016 and disengaged vide Ext. PW1/C on 27.8.2018. The licence of contract labour was valid from 16.2.2012 to 31.3.2017 and renewed only on 16.3.2021. Thus, as on 27.6.2018 the licence under Section 12 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 was not operative. Section 12 Clause (1) of Contract Labour (Regulation and Abolition) Act, 1970 as follows:

"12. Licensing of contractors.—

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours or work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and shall be issued on payment of such fees and on the deposit of such sum, If any, as security for the due performance of the conditions as may be prescribed".

17. Section 13 of the Contract Labour (Regulation and Abolition) Act, 1970 provides as follows:—

13. Grant of licences.—

(1) Every application for the grant of a licence under sub-section (1) of Section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted under this adapter shall be valid for the period specified therein and may be renewed from time to time for such period, and on payment of such fees and on such conditions as may be prescribed".

18. Similarly Section 9 of Contract Labour (Regulation and Abolition) Act, 1970 is as follows:—

9. Effect of non-registration.—

No principal employer of an establishment, to which this Act applies, shall—

(a) in the case of an establishment required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that section,

(b) in the case of an establishment the registration in respect of which has been revoked under Section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be".

19. Ext. R-1 is the register of workmen employed by the contractor and principal employer is M/s Nestle India Ltd. On serial no.59 Harpreet Kaur is described as *"receptionist"* which is expressly different nature of employment than other workmen mentioned in the register. The contract of respondent no.3 with respondents no.1 and 2 was in respect of security service only for 65 workers from 1st April, 2016 to 31 December, 2023. The contract of service between respondents no. 1and 2 and respondent no.3 is Ext. R-8. It mentions a reception duty but does not explain the nature of duties. As already mentioned above the respondent no.3 has failed to produce the register required to be maintained under Section 29 of the Contract Labour (Regulation and Abolition) Act, 1970 regarding nature of duties being performed by each of the contract labour employed by the principal employer. Therefore Ext. R-1 does not describe the post of petitioner as lady guard cum receptionist in consonance with the pleadings of respondent no.3 regarding the nature of work alleged to have performed by her. The application for employment Mark-A also described that she was employed in the capacity of a receptionist.

20. The fact which emerge from evidence are that thought petitioner was engaged through respondents no.1 and 2 they did not have any valid licence for supplying contract labour after 31.3.2017. The licence was only renewed on 26.3.2021. RW2 Shri Amit Kumar HOD HR M/s Nestle India Ltd. has mentioned that petitioner was reporting to the site incharge. He does not mention that petitioner was reporting to supervisor appointed by respondents no.1 and 2. The principal employer has not produced certificate under Section 7 of Contract Labour (Regulation and Abolition) Act, 1970 and also register and record of the particular contract labour employed, nature of work performed by contract labour and rate of wages being paid to them.

21. Non production of record pertaining to the work being performed by the petitioner with the principal employer would advert this court to draw an adverse inference and going by the record of respondents no.1 and 2 and contention made by the petitioner it can safely be inferred that she actually worked in the capacity of receptionist which is not a security related service. The licence of respondents no.1 and 2 for the period of her disengagement is under doubt which also points towards the fact that she actually worked under the supervision and control of respondent no.3. As already mentioned above RW2 Shri Amit Kumar denied that petitioner was reporting to site incharge.

22. The letter of disengagement of petitioner is Ext. PW1/C and contrary to the contention of respondents no.1 and 2 that they have offered a job of security to the petitioner at Nalagarh, there is no such information mentioned in Ext. PW1/C. Respondents no.1 and 2 merely conveyed the will of respondent no.3 and obeyed the order of respondents no.3 disengaging the services of the petitioner. This fact also exemplifies the sham nature of contract between respondents no.1 and 2 and respondent no.3. The respondents were practising the policy of hire and fire in violation of basic provisions of the Industrial Disputes Act, 1947 in camouflage of labour contract between them. As mentioned above respondents no.1 and 2 as well as respondent no.3 did not comply with the mandatory provisions of Contract Labour (Regulation and Abolition) Act, 1970 neither maintained the essential record as provided under the Act. The respondents not only violated the provisions of Contract Labour (Regulation and Abolition) Act, 1970 but also the basic provisions of the Industrial Disputes Act, 1947 as services of petitioner were disengaged without following the mandatory provisions of Section 25-F without any notice or without any compensation in lieu of notice. The fact that petitioner had completed 240 days of continuous work is clear from the mandays chart of respondents no.1 and 2 not disputed by respondent no. 3. In cross-examination of petitioner it is not controverted that she was not interviewed by the HR department of M/s Nestle India. In the light of these above discussion it is clear that the services of the petitioner initially engaged by respondent no.3 in camouflage of contract agreement with respondents no.1 and 2. The petitioner was chosen by the official of respondent no. 3 and appointed as receptionist which was not the nature of services of contract labour being provided by respondents no. 1 and 2. These facts clearly show that respondent no. 3 has disengaged the services of the petitioner in violation of the provisions of the Industrial Disputes Act in unjustified and illegal manner. The issue no.1 is accordingly decided in the favour of petitioner and against the respondents.

Issue No.2

23. The evidence on record reveals that the petitioner was disengaged from her services by respondent no. 3 by the collective action of respondents no.1 and 2 and respondent no. 3 even if she was employed through respondents no.1 and 2 the nature of service have exercised by respondent no.3 establishes that she was actually under the employment of respondent no. 3. The services being disengaged in violation of the Industrial Disputes Act, 1947 she is entitled for the reinstatement in her post as receptionist with respondent no.3 along-with seniority and continuity of service. She is also entitled for a compensation of Rs.1,00,000/- each from respondents no.1 & 2 and respondent no. 3 by way of back wages. This issue is decided accordingly.

Issues No. 3, 4 & 5

24. The onus of proving these issues on the respondents. The maintainability of the claim petition basically challenged on the ground that petitioner was engaged by respondent no.3 but by respondents no.1 and 2. The overwhelming evidence reveal that the employment by the respondents no.1 and 2 a camouflage though the petitioner actually under the employment of respondent no.3. Since her disengagement was in violation of the provisions of the Industrial Disputes Act, 1947, the present claim is maintainable. Therefore, it is not established that the

petition was bad for misjoinder of necessary party as well as the petitioner has enforceable cause of action to file the present petition. Hence all these issues are decided in the favour of the petitioner.

Issues No. 6 & 7

25. Nothing appears from the evidence of the case file that the petitioner had suppressed material facts from this court. It is the case of the petitioner from the very beginning that she was actually interviewed by the HR department of respondent no.3. This fact remains uncotroverted from evidence on the case file hence it is established that petitioner had come to the court with clean hands and is not estopped of her act and conduct from filing the present claim. Hence both these issues are decided in the favour of the petitioner.

Issue No.8

26. Nothing specific appears from the pleadings of the parties and the evidence so as to show that this court has no jurisdiction to try the dispute between the parties. The adjudication is in accordance with the reference made to this court this court has jurisdiction to decide the industrial dispute relating to the illegal termination of the petitioner, hence this issue is also decided in the favour of petitioner.

Relief

27. In view of my discussion on the issues no. 1 to 8 the claim petition succeeds and is partly allowed. The petitioner is entitled for the reinstatement in her post as receptionist with respondent no.3 along-with seniority and continuity of service. She is also entitled for a compensation of Rs.1,00,000/- each from respondents no.1 & 2 and respondent no.3 by way of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 10/2023

Date of Institution : 25.3.2023

Date of Decision : 16.11.2024

1. Smt. Gulabi w/o Shri Devi Chand, r/o Village Mojhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P.

2. Smt. Vimla w/o Shri Sant Ram, r/o Village Mojhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P.

3. Smt. Banti w/oShri Sham Lal, r/o Village Mojhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P.

4. Shri Laxmi Chand s/o Shri Kai Chand, r/o Village Dhanala, Tehsil Pangi, District Chamba, H.P.

5. Shri Ravinder Kumar s/o Shri Dhan Dev, r/o Village Leo, P.O. Sahali, Tehsil Pangi, District Chamba, H.P.

6. Shri Devi Charan s/o Shri Mohan Lal, r/o VPO Sahali, Tehsil Pangi, District Chamba, H.P.

7. Shri Devi Sharan s/o Shri Mohan Lal, r/o VPO Sahali, Tehsil Pangi, District Chamba, H.P.

8. Shri Tulsi Ram s/o Shri Fanshu Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . . *Petitioners*.

Versus

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

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For Respondent : Sh. Ajay Thakur, Ld. Dy.D.A.

AWARD

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

"Whether the action of the employer *i.e.* the Divisional Forest Officer, Forest Division Chamba, District Chamba, H.P. to give fictional breaks in services to workmen from time to time, to change their service conditions from daiy wage workers to bill basis during the year, 2009 to till the date of raising demand notice by the workmen (1) Smt. Gulabi w/o Shri Devi Chand, r/o Village Mojhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. (2) Smt. Vimla w/o Shri Sant Ram, r/o Village Mojhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. (3) Smt. Banti w/oShri Sham Lal, r/o Village Mojhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. (4) Shri Laxmi Chand s/o Shri Kai Chand, r/o Village Dhanala, Tehsil Pangi, District Chamba, H.P. (5) Shri Ravinder Kumar s/o Shri Dhan Dev, r/o Village Leo, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. (6) Shri Devi Charan s/o Shri Mohan Lal, r/o VPO Sahali, Tehsil Pangi, District Chamba, H.P. (7) Shri Devi Sharan s/o Shri Mohan Lal, r/o VPO Sahali, Tehsil Pangi, District Chamba, H.P. (8) Shri Tulsi

Ram s/o Shri Fanshu Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workmen, is legal and justified? If not, from which date what relief of seniority, regularization of services and past service benefits above aggrieved workmen are entitled to as per demand notice dated nil received on 05-10-2021 and rejoinder dated 27-01-2022 (copies enclosed) from the above employer?"

2. After receipt of above mentioned reference a corrigendum reference dated 17 April, 2023 has been received from the appropriate authority for adjudication which reads as under:

"Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P., *vide* notification of even No. dated 04-03-2023 for legal adjudication. However, inadvertently the correct facts could not be mentioned about name of the employer in the said notification. Therefore, the name of the employer may be read as "the Divisional Forest Officer, Forest Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. instead of "the Divisional Forest Officer, Forest Division Chamba, District Chamba, H.P".

3. Thereafter another corrigendum reference dated 8 August 2023 has been received from the appropriate authority for adjudication as follows:—

"Whereas, a reference has been made to Ld. Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P., *vide* notification of even No. dated 04-03-2023 and corrigendum dated 17-04-2023 for legal adjudication. However, inadvertently the correct facts could not be mentioned about name of the worker at Sr. No.7 in the said notification. Therefore, the name of the worker at Sr. No.7 may be read as "Shri Devi Sharan s/o Shri Nathu Ram, r/o Village Leo, P.O. Sahali, Tehsil Pangi, District Chamba, H.P." instead of "Shri Devi Sharan s/o Shri Mohan Lal, R/O Village Sahali, Tehsil Pangi, District Chamba, H.P.", as alleged by the workman".

4. *Vide* separate statement of learned Counsel for the petitioners has stated that the petitioners no.1, 2 and 4 had filed CWP No.1608/2008 before the Hon'ble High Court of H.P. and as per orders of Hon'ble High Court the respondent department has regularized the services of the petitioners No.1, 2 and 4 and also engaged the daughter of claim petitioner no.4 hence the claim on behalf of petitioners no.1, 2 and LRs of petitioner no.4 has been withdrawn.

5. The brief facts as stated in the claim petition are that the petitioner no.3 was engaged by respondent department on daily wage basis on muster roll since the year 1994, petitioner no.5 was engaged since 1996 and petitioners no. 6 and 7 have been engaged by the department on daily wage basis on muster roll since the month of April, 1997 in Forest Range Sach. It is also asserted that petitioner no.8 was engaged by respondent department on daily wage basis on muster roll since April, 2000 in Forest Range Pangi, Forest Circle Chamba. It is submitted that the petitioners continuously worked with the respondent department and they were engaged as well disengaged and given fictional breaks from time to time, though they were not allowed to complete 160 days in each calendar year in order to prevent their claim of regularization. It is also alleged that the services of daily wage workmen who were junior to the petitioners have been retained continuously by the respondent and have also been regularized. It is alleged that during year 2009 service condition of petitioners were changed from daily wage workers to bill basis without any notice of change under Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that the respondent has not only violated the specific provision of the Act but also ignored the notification no. FFE-C(1)-35/2009 Shimla-2 issued by Government of Himachal Pradesh regarding engaging of workmen on muster roll basis even after the introduction

of bill basis system. The bill basis system was introduced in some divisions in the District Chamba in the year 2015-2016 but for petitioners this condition was violated by respondent department and petitioners were entitled to be issued muster rolls and continuing as daily wager even when the new system was introduced in District Chamba. It is alleged that by following the breaks and not allowing the petitioners to complete 160 days of continuous service the respondent department has snatched the opportunity from the petitioners of getting regularized within period of 10/8 years as per policy of Government of H.P. which amounts to unfair labour practice under the provisions of the Act. The same is also violative of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar vs. State of H.P. in CWP No.2735/2010. It is further submitted that respondent has not disclosed the actual number of days before Conciliation Officer and that they have given fictional breaks to petitioners from time to time which amounts to unfair labour practice under the Act. The entire period for which respondent department has intentionally provided fictional breaks to the petitioners is required to be counted as period of continuous service of the petitioners for the purpose of calculation of 160 days of continuous service. The cessation of work was not due to any fault on the part of the employees moreover the respondent department neither circulated any seniority list of workers working with the respondent nor got noted from the petitioners. Sufficient work was always available with the respondent department however they intentionally gave fictional breaks to the petitioners but favoured the juniors who were favourite of the respondent. Not only this new person were engaged and also regularized who were junior to the petitioner in violation of the principle of 'last come first go'. The petitioners have referred to various persons namely Devi Singh, Jagdish Kumar, Roop Singh, Noori, Kewal Ram, Ratto, tilak Raj, Neelam Chand, Shiv Chand, Prem Dei, Lal Dei, Naino Devi, Lekh Ram, Yog Raj, Jaiwanti Devi, Pan Dei, Prem Nath, Dhani Ram, Ram Singh Palak Chand, Subahsh and Bahadur Singh etc. who according to the petitioners were juniors to the petitioners and were also subsequently regularized by the department. It is further submitted that the petitioners had spotless service record with the department and they were never charge-sheeted for any act of indiscipline and negligence of work or misconduct. They were performing their duties with full devotion and no departmental inquiry was ever conducted against them. The action of respondent department is alleged to be highly illegal, unjustified and against the principle of natural justice. In the light of these averments and allegations it is prayed that period of intermittent fictional breaks given to petitioners no.3,5,6, 7 and 8 are to be counted towards the calculation of continuous period of 160 days in each calendar year as envisaged under Section 25-B of the Act. It is further prayed that change of service condition of petitioner by the respondent from daily wage worker to bill basis during 2009 till date without complying with the provisions of the Act may be set aside and period of services of petitioners may also be treated on muster roll basis since their engagement till date for the purpose of completion of 160 days in each calendar year. It is also prayed that the services of petitioners may be regularized in the ten years policy of State Government along-with consequential benefits of regularization, back wages, seniority, past service benefits and compensation from the respondent department.

6. In reply on behalf of respondent preliminary objections qua maintainability, suppression of material facts, res-judicata, res-subjudice, limitation etc. have been raised. On merits, it is asserted that petitioner no.3 Smt. Banti s/o Shri Sham Lal was initially engaged as majdoor in the month of November, 1994 to July, 2020 except years 1996, 2008 to 2010. Petitioner no.5 Shri Ravinder Kumar was initially enaged as majdoor in the month of September, 2003 to July, 2020 except in the year 2006, 2007 and 2017. Petitioner no.6 Shri Devi Saran was initially engaged as majdoor in the month of March, 2006 to July, 2020 except the year 2007 and 2008 and petitioner no.7 Shri Devi Charan was initially engaged as majdoor in the month of April, 2005 to July, 2020 except the year 2007. Petitioner no.8 Shri Tulsi Ram was initially engaged as majdoor in the month of Apri, 2000 to July, 2022 except in the year 2002, 2007 to 2008, 2011, 2015 and 2021. The mandays charts of the petitioners has been produced and it is asserted that the petitioners were doing seasonal forestry works intermittently. According to respondent the forestry

works are generally seasonal in nature which includes planting operations, nursery works, fire suppression measures, maintenance operations etc. The operations of these works is allotted limitation depending upon nature and extent of the area/works. The respondent has asserted that forestry works not in operation around the year due to their seasonal nature and also due to availability of funds. It has been mentioned in the reply that the case of the petitioners no.1, 2 and 4 were under consideration with the government of Himachal Pradesh. It is also asserted that petitioner no. 8 Tulsi Ram had filed with Court vide Reference No. 876/2016 which is already pending for adjudication hence this matter regarding respondent no.8 is already subjudice. It is also submitted that petitioner no. 3 Banti and petitioners no. 5 to 8 never completed 160 days in any calendar year. Respondent has mentioned that as per the Government instruction No.Ft.A-1-87 (ALM)/Contract dated 18.10.2007, HP Govt. Notification No.FFE-B C (1)-35/2009 dated 28.4.2009 and as per ACS Forest Notification No.FFE-A (6) 2-16/2015 dated 12.6.2017 all the works of forest are to be carried out on tender basis and as such the department does not engage any labour either on muster roll or by way of any other mean. All the works are to be carried out on bill basis which is kind of contract and payment is made as per works carried out on schedule rates. Respondent has denied that they had ever changed working conditions of the petitioners as the petitioner were carrying out the work on bill basis as petty contractor on the basis of availability of works with the department. It is also asserted that all the works of forest being carried out on tender basis and not by way of muster roll basis or any other means. All other allegations made in the claim petition have been denied. It is denied that the intentional fictional breaks have been provided by the department to the petitioners though it is admitted that petitioners worked intermittently on muster and bill (petty contractor basis). The respondent denied that they had violated the principle of 'last come first go' as embodied under Sections 25-G and 25-H of the Act. It is also asserted that conferment of work-charge status does not arise in case the establishment ceased to be a work charged establishment which the ratio had been laid down by Hon'ble Supreme Court in its order dated 15.1.2015 in SLPs (Civil) No.8830-8869 of 2011 titled as State of H.P. and Ors. *vs.* Rakesh Kumar and Ors. It is asserted that since the forest department is not a work charged establishment hence the present reference is not maintainable.

7. The petitioners by way of rejoinder has denied preliminary objections raised in the reply facts stated in the petition are reaffirmed and reasserted.

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

1. Whether the respondent has illegally given fictional breaks in services of the workmen from time to time and change their service conditions from daily wage workers to bill basis during year, 2009, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, whether the petitioners are entitled to seniority, regularization of services and past service benefits, as claimed? . . *OPP.*

3. Whether the petitioners have not approached the Court with clean hands and have suppressed the material facts, as alleged. If so, its effect? . . *OPR.*

4. Whether the claim of the petitioners No. 2, 3 & 4 is barred by principle of Resjudicata, as alleged? . . *OPR.*

5. Whether the claim of the petitioners is bad on account of delay and latches? . . *OPR.*

6. Relief.

9. The petitioners in order to prove their case Shri Devi Sharan (PW1) made statement by way of affidavit Ext. PW1/A. He has also produced on record information under RTI regarding appointment and regularization of workers ext.PX1, list of regular and daily wages worker Ext. PX2, information under RTI regularization of worker Ex. PX3, notification year 2009 Ex. PX4, reply Ex. PX5, judgment Ex. PX6, order datd 10.11.2020 Ex. PX7, demand notice Ex. PX8, rejoinder to demand notice Ex. PX9, mandays Ex. PX10 and mandays of Tulsi Ram Ex. PX11. Petitioners have also examined Devi Charan (PW2) made statement by way of affidavit Ext. PW2/A, Shri Tulsi Ram (PW3) made statement by way of affidavit Ext. PW3/A, Banti (PW4) made statement by way of affidavit Ext. PW4/A, Ravinder Kumar (PW5) made statement by way of affidavit Ext. PW5/A. All these witnesses have reiterated the facts stated in the claim petition.

10. Respondent has examined Shri Devinder Singh Dhadwal, Divisional Forest Officer, Killar, Tehsil Pangi, District Chamba, H.P. by way of affidavit Ext. RW1/A wherein he reiterated the facts stated in the reply. He has produced on record copy of mandays of Bimla Ex. RW1/B, copy of mandays of Gulabi Devi Ex. RW1/C, copy of mandays of Laxmi Chand Ex. RW1/D, copy of mandays of Banty Ext. RW1/E, copy of mandays of Ravinder Kumar Ex. RW1/F, copy of mandays of Devi Saran Ex. RW1/G, copy of muster roll/bills of Tulsi Ram Ex.RW1/H, copy of judgment dated 6.4.2010 Ex.RW1/J, copy of judgment dated 6.9.2021 Ex. RW1/K, copy of letter dated 2.11.2023 Ex. RW1/L, copy of letter dated 18.10.2007 Ex. RW1/M, copy of letter dated 1.11.2023 Ex. RW1/N, copy of notification dated 28.4.2009 Ex. RW1/O and copy of circular dated 12.6.2017 Ex. RW1/P.

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

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

Issue No.1	:	Yes
Issue No.2	:	Yes, decided accordingly
Issue No.3	:	No
Issue No.4	:	Redundant
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

13. As already mentioned above the claim with respect to petitioners no.1, 2 and 4 has been withdrawn as they were already granted relief on the basis of order of Hon'ble High Court. In the present claim petition the claim subjudice in respect of petitioners no.5, 6, 7 and 8. All the above mentioned petitioners have appeared in the witness box and they have deposed on oath to the effect that they had been engaged initially on daily wage basis and subsequently there was change in condition of their service by the respondent who had shown them to be engaged on bill basis. In this respect no notice of change of service condition under Section 9-A of the Act was ever issued

to the petitioners. The petitioners were given intermittent fictional breaks in their service without any reason. They assert that there was availability of work throughout with the respondent as this fact is evident from the continuous employment being provided to other workmen who were junior to the petitioners and were subsequently eligible for regularization and regularized by the department. These allegations have been denied on behalf of respondent. In the pleadings and affidavit of RW1 Shri Devinder Singh Dhadwal, it has been time and again asserted that the work of forest department is seasonal in nature and the employment of the workmen depends upon the availability of works and funds. The respondent has asserted that the petitioners have themselves disengaged from wok and never completed 160 days of continuous service in any calendar year so as to make them entitle for the services benefits on the basis of continuity of services. It is important to pursue the cross-examination of the petitioners who had denied that the work of respondent department was seasonal in nature. Petitioners also denied that they were not given any fictional breaks by the department and they have themselves not completed 160 days of continuous works in each calendar year.

14. RW1 Shri Devinder Singh Dhadwal has however admitted during course of cross-examination that the petitioners i.e. Banti, Ravinder Kumar, Devi Sharan, Devi Charan and Tulsi Ram were kept as daily wage beldar in the year 1994, 2003, 2006, 2005 and 2000 respectively. He reiterates that these workers were kept on bill/muster roll basis. He has asserted that the petitioners were kept on seasonal work and not for a continuous work. He however admitted that he could not produce any notification qua such seasonal work. He has asserted that there exists notification in this regard but such notification is not produced on the case file. He has denied that fictional breaks were given to the petitioners so as to prevent them from completing continuous service. He has admitted that Banti was employed on bill basis in the year 2011, Ravinder Kumar in the year 2011, Devi Saran in the year 2009, Devi Charan in the year 2008 and Tulsi Ram in the year 2010. He has admitted that no notice of change in service condition from daily wager to bill basis was ever given to the petitioners. Though he denied that these conduct of the respondent has caused financial loss to the petitioners however it is clear that the act of the respondent department in unilaterally changing service condition of the petitioners from muster roll basis to bill basis without any notice amounted to violation of Section 25-F of the Act and also unfair labour practice in Schedule Vth of the Act. This witness has admitted that document Ext. PX has been issued by their department but he has admitted that as per this document Dhani Ram and Prahlad Chand were appointed in the year 2004 and 2017. Though he asserts that these workers were regularized as they have completed 160 days of regular work however it is argued by learned counsel for the petitioner that some of the persons were junior to the petitioners who have also been working in the same interval of time and the respondent department intentionally not provided continuous work to petitioners in order to deprive them benefit of job. It is asserted by the respondent that petitioners were engaged only for seasonal work and they had worked intermittently with the department however no such documentary evidence or facts appears on record to show that petitioners were asked to join the services by the respondent. It appears that respondent provided continuous work to some of the workmen while obtained intentional intermittent work from other workmen. This act and conduct of the respondent violated the right to equality of petitioners under Articles 14 and 21 of Constitution. It also amounts to unfair labour practice under the Industrial Disputes Act, 1947. In these circumstances and the present case also though the record of muster rolls work done by the petitioners have been produced by respondent, it is asserted that the petitioners have not been working continuously with significant period of non employment with the respondent. It is admitted by RW1 Shri Devinder Singh Dhadwal that initially all the petitioners were engaged on daily wage basis as beldar. The notification regarding the contractual employment had appeared in the year 2009. However since the petitioners were already working on daily wage basis it was the mandatory requirement to issue notice of change in service condition of the petitioners from daily wage basis to bill basis. During these period respondent has also provided continuous work to other workers which clearly points towards the intentional intermittent breaks being provided to the

petitioners. In these circumstances the period of work which is shown to the break in continuous services of the petitioner is required to be counted for the purpose of completion of 160 days in each caleandar year. Similarly the respondent appeared to have violated the principle of 'last come first go' when the persons junior to the petitioners were not only employed but sub resjudicatly regularized by the department. It is hence established that the respondent has illegally given fictional breaks in the services of petitioners no.3, 5, 6,7 and 8 from time to time and change their service condition from daily wage work to bill basis during subsequent to the year 2009. Issue no.1 is accordingly decided in the favour of petitioners and against the respondent.

Issue No.2

15. It is appeared from the evidence led before this court that respondent department has intentionally provided fictional breaks in the services of the petitioners despite availability of work and funds. Thus the period of breaks as shown in the record produced by the respondent has to be counted as period of continuous service of the petitioners for the purpose of subsequent benefits including the benefits of regularization in accordance with the policy of State Government. The petitioners are accordingly entitled to seniority and regularization of services including past service benefits on the basis of the date of their initial engagement as admitted by the respondent. Hence issue no. 2 is decided accordingly.

Issue No. 3

16. The onus of proving this issue on the respondent. Nothing could be produced in the evidence to show that the petitioners have not come to the court with clean hands as well as suppressed the material facts which were necessary for the adjudication of the case. Accordingly issue no. 3 is decided in the favour of the petitioners and against the respondent.

Issue No. 4

17. Issue no. 4 was subsequently raised against the petitioners no.1, 2 and 4. It appears that the claim with respect to petitioners no.1, 2 and 4 has already been withdrawn hence issue no. 3 is redundant.

Issue No. 5

18. The claim in the present case was raised in the year 2023. The petitioners have continuously working with the respondent department from the year 1994 and 1995, 2000 and 2005 till date. The petitioners are pursuing their claim with the respondent department and it does not appear that any point of time the dispute had not subsisted between the parties. There does not appear to be any unexplained delay in raising the dispute with the appropriate authority, hence this issue is decided in the favour of the petitioners and against the respondent.

Relief

19. In view of my discussion on the issues no. 1 to 3 and 5 the claim petition succeeds and is partly allowed. The respondent is directed to reinstate the services of the petitioners along-with seniority and continuity in service. The respondent is also directed to count period of intermittent breaks in continuity of service of the petitioners for the purpose of regularization. In lieu of back wages the respondent is directed to pay compensation of Rs.1,00,000/- to the petitioners along-with all consequential benefits as per policy of the State Government. Parties are left to bear their costs.

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

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

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

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

Reference No. : 140/2017

Date of Institution : 21.6.2017

Date of Decision : 18.11.2024

Shri Jatinder Singh s/o Shri Devi Singh, r/o Village Dikryund, P.O. Bhanjraru, Tehsil Churah, District Chamba, H.P. . . *Petitioner*.

Versus

The Branch Manager, H.P. Gramin Bank, Branch Bhanjraru, Tehsil Churah, District Chamba, H.P. . . *Respondent*.

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For Respondent : Sh. Vaneet K. Gupta, Ld. Adv.

AWARD

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

> "Whether termination of the services of Shri Jatinder Singh s/o Shri Devi Singh, r/o Village Dikryund, P.O. Bhanjraru, Tehsil Churah, District Chamba, H.P. *w.e.f.* 29-01-2015 (as alleged by workman) by the Branch Manager, H.P. Gramin Bank, Branch, Bhanjraru, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner belongs to Tehsil Churah, District Chamba, H.P. The branch of respondent bank is situated at Bhanjraru, Tehsil Churah, District Chamba, H.P. and the petitioner was engaged in the Regional Office of the bank at Chamba, Tehsil and District Chamba, H.P. According to petitioner he was initially engaged on

daily wage basis without any appointment letter during 1.4.2013 at branch Bhanjraru Tehsil Churah, District Chamba, H.P. and he worked continuously till 28.1.2015 with the respondent. No casual card/attendance card was ever provided to petitioner from 1.4.2013 till his illegal termination. According to petitioner he was getting salary of Rs.900/- per month and later increased to Rs.1800/- per month and the amount was credited in the account of petitioner and saving account of petitioner was opened in branch Bhanjraru under the directions of respondent no.1. After the transfer of Branch Manager, new Branch Manager joined and taken charge of branch and bank official Shri Chattar Singh in connivance with new branch manager terminated the services of the petitioner and appointed nephew of Chattar Singh namely Govind in place of petitioner. The petitioner was asked not to come to bank as the bank remained close for one month but later he came to know that Chattar Singh was appointed in his place and there was no holiday in the bank. He was told by branch manager that new person has been appointed as safaikaramchari on daily wage basis. The petitioner alleges that his services were orally terminated by respondent without issuing one month's notice or indicating the reason of retrenchment or payment of retrenchment compensation. It is alleged that respondent has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner has further submitted that he is very poor having no source of income. He approached respondent time and again where he was orally assured that he would be re-engaged but the respondent thereafter did not pay any heed to his request. He served legal notice to the respondent through his counsel Shri O.P. Bhardwaj learned Advocate District Courts Chamba however despite this he was not re-engaged. The petitioner thereafter raised industrial dispute in the office of Labour Officer Chamba in May, 2015. After failure of conciliation proceedings the matter was referred by the Labour Commissioner for adjudication before this court. The petitioner also alleges that despite availability of sufficient work his illegal termination was carried out by the respondent. It is alleged that respondent further retained the services of persons junior to the petitioner in violation of the principle of 'last come first go' embodied under Section 25-G of the Act. The petitioner was not given an opportunity for re-employment but preference was given to the other persons. It is alleged that the persons namely Govind Ram s/o Jaram Singh and Des Raj s/o Lal Chand were retained by the respondent bank despite being junior to the petitioner. The petitioner never remained close for work since 1.4.2013 and hence his termination was carried out without any fault and without following the procedure under the Act. In the light of these averments it is prayed that oral order of termination/retrenchment of services of petitioner from 28.1.2015 be set aside as his illegal termination is illegal, arbitrary and highly unjustified. It is also prayed that the respondent be directed to reinstate the service of petitioner from 28.1.2015 along-with seniority and continuity in service. The petitioner has also prayed for payment of full back wages pertaining to the period of his illegal termination.

3. In reply to the claim petition the respondent raised preliminary objections qua maintainability, locus standi and petition being time barred. On merits the respondent has denied that the petitioner was ever engaged on daily wage basis during 1.4.2013 in branch office Bhanjraru, Tehsil Churah, District Chamba, H.P. The respondent also denied that the petitioner continuously worked till 28.1.2015. It is asserted that there was no post in the office of respondent no.1 against which the petitioner has filed his claim and as per the norms, rules and regulations there is no policy of daily wagers in the bank. Respondent denied that they had given any salary to the sum of Rs.900/- which was later enhanced to Rs.1800/- per month to the petitioner. The petitioner himself opened his saving account for personal use. Respondent further denied that they have deposited the salary in the salary account of the petitioner from 1.4.2013 to 28.1.2015. Other allegations made in the petition were also denied and it was prayed that respondent has not committed any violation of provisions of Section 25-F and 25-G of the Act and that the petitioner was never employed by the bank any interval of time.

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

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

1. Whether termination of the services of the petitioner *w.e.f.* 29-01-2015 by the respondent is/was illegal and unjustified, as alleged? . . *OPP*.

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

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

4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . *OPR*.

5. Whether the petitioner is not a worker/employee of the respondent, as alleged? . . *OPR*.

6. Whether the claim petition is time barred, as alleged? . . *OPR*.

Relief

6. In order to prove his case the petitioner has produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the claim petition and he also produced on record legal notice Ext. PW1/B, reply to notice Ext. PW1/C, certificate Ext. PW1/D, passbook Ext. PW1/E and bank statement Ext. PW1/F in his deposition. Petitioner also examined Shri Vinod Kumar s/o Shri Ram Dyal by way of affidavit Ext. PW2/A which has mentioned on oath that the petitioner belongs to Tehsil Churah, District Chamba and he was worked with branch of respondent bank as daily wagesafaikaramchari situated at Village Bhanjraroo, Tehsil Churah, District Chamba, H.P. This witness was engaged at Regional Office of respondent bank at Chamba, Tehsil and District Chamba, H.P. After the transfer of the Branch Manager a new Branch Manager joined and took charge of bank and bank official Chattar Singh in connivance with new branch manager and Regional Branch Manager terminated the services of the petitioner and illegally appointed nephew of Chattar Singh namely Govind after terminating the services of the petitioner. He also stated that petitioner remained unemployed from his illegal termination.

7. Respondents have examined Shri Subham Ashish Kapoor, Branch Manager, HPGB Bhanjraroo, District Chamba, H.P. as RW1. He reiterated the facts stated in the reply by way of his affidavit Ext. RW-1.

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

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

Issue No.1 : Yes

Issue No. 2 : decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Issue No.6 : No

Relief. : Petition is partly allowed per operative portion of Award.

REASONS FOR FINDINGS

Issue No.1

10. It is the case of the petitioner as stated in his affidavit Ext. PW1/A that he had worked with branch manager of respondent bank as daily wage worker *i.e*. safaikaramchari in the branch Bhanjraroo, Tehsil Churah, District Chamba, H.P. from April, 2013 till 28.1.2015. He has alleged that the new Branch Manager in connivance with one official of bank Chattar Singh had appointed nephew of Chattar Singh in his place consequently terminating his services without following the procedure of the Act. It is pertinent to observe the pleadings on behalf of respondent as well as the affidavit of RW1 Shri Subham Ashish Kapoor, Branch Manager. He has stated in clear terms that petitioner was neither engaged by the respondent on daily wage basis during year 1.4.2013 at branch office Bhanjraru, District Chamba, H.P. nor the petitioner continuously worked till 28.1.2015 with the respondent. He also denied that the services of workmen junior to the petitioner were retained continuously. It appears from the pleadings as well as evidence produced on behalf of the respondent that they clearly denied that petitioner was ever appointed by them or had worked in their branch office Bhanjraru. Respondents denied that they ever paid salary of Rs.900/- per month to the petitioner and never enhanced the amount to the Rs.1800/- per month. RW1 Shri Subham Ashish Kapoor in his cross-examination has merely shown ignorance to but not expressly denied that petitioner had issued a notice Ext. PW1/B to the bank on 12.4.2015. He further feigned ignorance to the suggestion that the bank had given reply Ext. PW1/C to the said notice on behalf of the petitioner. The notice Ext. PW1/B and the reply Ext. PW1/C have been duly proved during course of petitioner's evidence. Ext. PW1/B is a notice which have been issued to the Branch Manager, H.P. Gramin Bank Bhanjraru and the Managing Director, H.P. Gramin Bank, Head Office Mandi (HP) by Shri O.P. Bhardwaj, Advocate of the petitioner. It is pertinent to peruse the reply dated 16.4.2015 Ext. PW1/C wherein it has been admitted on behalf of the respondent bank through their advocate that the petitioner was working as casual labourer with the bank and performed his duties on the availability of work. Though it was denied that petitioner was ever appointed as safaikaramchari. Petitioner has also produced certificate Ext. PW1/D issued from Up Pradhan, Gram Panchayat, Bhanjraru who has also confirmed the employment of the petitioner with the respondent bank. Petitioner has proved on record the copy of passbook Ext. PW1/E, bank statement Ext. PW1/F. These documents clearly show that the sum of Rs.1800/- was being credited in the account of the petitioner from 2.8.2014 to 31.1.2015. Besides these documents petitioner has also examined PW2 Shri Vinod Kumar who has stated on oath that the petitioner was working with the branch office of respondent bank on daily wage basis as safaikaramchari from April, 2013 continuously till 28.1.2015. In his cross-examination he denied that the petitioner never worked as safaikaramchari in the bank at any point of time. In the light of oral as well as documentary evidence produced by the petitioner regarding his employment with the respondent and since RW1 Shri Subham Ashish Kapoor has not denied that reply Ext. PW1/C was issued on behalf of respondent bank, it is evident that the petitioner had been working with the respondent bank at a particular interval of time. This important fact has been suppressed by the respondent in their pleading as well as the deposition made by RW1 on behalf of the respondent bank. The Hon'ble High Court of Himachal Pradesh in **State Bank of India &Anr. Vs. Puja, Latesh HLJ 2022 (HP)(1) 247** has observed in para no.9 and para no.15 as follows:—

> "9. The specific case of workman, as pleaded, that she was employed *w.e.f.* 9.6.2000 in the New Shimla Branch of the bank was neither denied nor otherwise rebutted by the bank hence, such fact was impliedly admitted. On the contrary, the bank raised the plea

that the workman was employee of the contractor with whom the contract for installation of generator set had come into being in August, 2002. The bank, however, admitted that workman was occasionally assigned the sweeping and cleaning work on need basis and was paid Rs. 50/- per day for such job, which was being paid to her in addition to Rs. 700/- per month as Generator set attendant by deducting the same from payable amount to the contractor as per contract. Thus, there was a clear admission of the bank to the effect that the workman was being paid Rs. 50/- as daily wage for sweeping and other office works assigned to her from petty cash. It was not the case of the bank that its concerned branch had some other incumbent for the job of sweeping and cleaning. It is hard to believe that a branch of State Bank of India that too in a thickly populated area of town would remain without sweeping and cleaning for days together. Viewed in aforesaid perspective adverse inference is liable to be drawn against the bank for not having produced best evidence to prove from its records actual payments made to the workman....."

15. Analysing the facts of instant case, in light of the exposition of law discussed hereinabove, it can safely be held to be falling in the zone of exception. The bank being a public sector undertaking, was expected to place on record true and correct facts. The stand of the bank that workman was not its employee and also having been deployed causally, as noticed above, is belied by record and proved otherwise. Considering the incorrect stand having been taken by the bank, there is no hesitation to infer unfair labour practice having been applied by the bank. The workman was proved to have worked continuously on daily wage basis for more than five years. It is not the case of the bank that its concerned branch had a regular sweeper to sweep and clean the branch. It cannot be visualized that the branch of a bank, that too none else than State Bank of India, would not require service of a sweeper to clean and sweep the business place regularly. It is also unimaginable that the said branch of the bank would require the service of workman for the purposes of sweeping and cleaning occasionally. Thus, the conduct of the bank/management clearly proves its intent to ostensibly employ the workman on casual or temporary basis and to continue her as such for years with the object of depriving her of the status and privilege of permanent workman, which as per Clause-10 of the 5th Schedule of the Act amounts to unfair labour practice....."

11. In the present case also the oral as well as documentary evidence points towards the employment of the petitioner with the respondent bank. The respondent bank has failed to produce the record pertaining to the payment being made to the petitioner even if he was employed as a casual labourer. No record of the attendance and number of days for which the petitioner had worked with the respondent bank was also produced by the bank. In these circumstances an adverse inference arises with respect to the facts which have been put forward by respondent bank and the case of the petitioner to the effect that he continuously worked as safaikaramchari from year 2013 till January, 2015 is vindicated. The conduct of the respondent bank in employing the petitioner as casual labourer without getting any record of the number of days for which he had worked with the respondent as well as the record of the payments and mode of payment to the petitioner further amounts to unfair trade practices on behalf of the respondent bank. The sum total of evidence which have been produced before this court clearly points towards the employment of petitioner with the respondent bank. As there is deliberate suppression of fact on behalf of the respondent bank, it can safely be held that the termination of petitioner *w.e.f.* 29.1.2015 was illegal and unjustified. Issue no.1 is decided in the favour of petitioner.

Issue No.2

12. It has been proved from the oral as well as documentary evidence that the petitioner was employed by the respondent from year 2013 till the year 2015 as a safaikaramchari. No

evidence could be produced by the respondent to show for the given interval of time other person was working as safaikaramchari with the respondent bank. In these circumstances since the termination of the services of the petitioner w.e.f. 29.1.2015 was illegal and unjustified the petitioner is held entitled for reinstatement as daily wager safaikaramchari w.e.f. 29.1.2015 along-with compensation to the sum of Rs.50,000/- in lieu of back wages. Hence this issue is decided accordingly.

Issues No.3 & 5

13. The maintainability of the petition was challenged on the ground that petitioner had never worked with the respondent bank as well as he was not worker/employee of the respondent bank however facts to the contrary emerges from the evidence as well as documentary evidence on record the claim petition is maintainable and he (petitioner) was worker/employee of the respondent bank. Hence issues no.3 & 5 are decided in the favour of the petitioner.

Issue No. 4

14. It was asserted on behalf of the respondent that the petitioner has no locus standi and cause of action to file present petition as he had not worked with the respondent bank at any point of time. It further appeared that the petitioner had put in his work with the respondent for particular interval time regarding which the facts were suppressed by the respondent hence the petitioner has the locus standi and cause of action to file the present petition. Hence both these issues are decided in the favour of the petitioner.

Issue No. 6

15. The claim of the petitioner is alleged to be time barred. It is pertinent to observe that according to petitioner after his illegal termination he had time and again approached the respondent office asked them to re-engage him however his request was not accepted by the respondent. The petitioner had also issued a legal notice to the authorities of the bank. It appears that he was continuously pursuing his claim before the respondent bank. In these circumstances the present claim petition is not time barred hence this issue is decided in the favour of the petitioner.

Relief

16. In view of my discussion on the issues no. 1 to 6 the claim petition succeeds and is partly allowed. Since the termination of the services of the petitioner w.e.f. 29.1.2015 was illegal and unjustified the petitioner is held entitled for reinstatement as daily wager safaikaramchari w.e.f. 29.1.2015 along-with compensation to the sum of Rs.50,000/- in lieu of back wages.Parties are left to bear their costs.

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

Announced in the open Court today, this 18thday of November, 2024.

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

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

Reference No. : 46/2017

Date of Institution : 24.1.2017

Date of Decision : 18.11.2024

Shri Koll Singh s/o Shri Chatter Singh, r/o Village Kulal, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. . . *Petitioner*.

Versus

The Employer/Branch Manager, H.P. Gramin Bank, Branch Sach, Tehsil Pangi, District Chamba, H.P. . . *Respondent*.

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

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For Respondent : Sh. Vaneet K. Gupta, Ld. Adv.

AWARD

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

> "Whether termination of services of Shri Koll Singh s/o Shri Chatter Singh, r/o Village Kulal, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. during May, 2015 by the Employer/Branch Manager, H.P. Gramin Bank, Branch Sach, Tehsil Pangi, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner belongs to Tehsil Pangi, District Chamba, H.P. a remote part of the district which has been declared as Scheduled Tribe Area and hard area. The branch of respondent is situated at Sach, Tehsil Pangi, District Chamba, Himachal Pradesh. It is alleged that the petitioner/workman was initially engaged by respondents on daily wage basis without any appointment letter during year 24.4.2014 at branch Sach, Tehsil Pangi, District Chamba, H.P. and he continuously worked till 16.5.2015 with respondent bank whereas the services of junior workmen from the petitioner were retained continuously. Petitioner was not given any casual card/attendance card w.e.f. 24.4.2014 till his termination. According to petitioner he was getting salary of Rs.2000/- per month from the respondent and his services were orally terminated without issuing one month's notice in writing indicating the reason for retrenchment. The petitioner has alleged that his termination was in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) and without resorting to mandatory provisions. The petitioner being a poor person has no source of income and after his oral termination of services he approached the respondent time and again but he was not re-engaged by the respondent. The petitioner raised industrial dispute with Labour Officer, Chamba from where due to failure of conciliation

proceedings the matter was referred for the purpose of adjudication by the appropriate authority. The petitioner also alleges that respondents have violated the provisions of 'last come first go' by continuing the services of persons who are junior to the petitioner. He mentioned the name of Des Raj s/o Lal Chand and Govind s/o Jaram Singh as junior persons who were appointed after termination of his services continued to work with the respondents. According to petitioner he never remained closed for work since24.4.2014 till the date of his termination but the respondent bank without any fault terminated his services. He also asserts that since he was not provided any work the intentional break given by the bank in his services may be counted for the purpose of calculation of 160 days continuous service. According to petitioner he was working in accounts scanning, voucher, KYC files, filing up of account form, account holder postage, KCC account holders work as per direction of the respondent. He also visited many villages in Pangi every Sunday to make villagers aware to various insurance schemes and other schemes of the bank and also did work of cleaning and sweeping of branch of bank at Sach. The petitioner has further submitted that he remained unemployed from the date of his illegal termination and hence he has prayed that order of oral termination/retrenchment passed by the respondent bank from 16.5.2015 be set aside being illegal, arbitrary and highly unjustified. He has also prayed that his services may be reinstated from 16.5.2015 along-with seniority including continuity of services and he may be held entitled for full back wages from the date of his illegal termination.

3. In reply on behalf ofthe respondent preliminary objections qua maintainability, locus standi and cause of action and petition being time barred have been raised. On merits the respondents have denied that petitioner was ever engaged by the respondent on daily wage basis during 24.4.2014 at Branch Office Sach, Tehsil Pangi, District Chamba, H.P. It is has also denied that petitioner had worked till 16.5.2015 with the respondent. Respondents denied that this orally terminated the services of petitioner in violation of Section 25-F of the Act or that any person junior to the petitioner were retained in service. Respondents denied that they were giving salary of Rs.2000/- per month to the petitioner. Other averments made in the petition are denied and it is prayed that the claim petition may be dismissed.

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

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

1. Whether act of termination of services of the petitioner during May, 2015 by the respondent is/was illegal and unjustified, as alleged? . . *OPP*.

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

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

4. Whether the petitioner has no locus standi to file the claim, as alleged? . . *OPR*.

5. Whether the claim petition is time barred, as alleged? . . *OPR*.

6. Relief.

6. Petitioner in order to prove his case has produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the claim petition. He has also produced in evidence conciliation proceedings Ext.PW1/B and evidence of Shri Vinod Wali Ext. PW1/C. PW2 Shri Rishab

Chaudhary, Labour Inspector has produced on record statement of Koll Singh Ext. PW2/A, letter dated 1.7.2015 Ext.PW2/B, certificate dated 2.4.2015 Ext. PW2/C, certificate dated 5.2.2015 Ext. PW2/D, certificate dated 5.4.2015 Ext. PW2/E, certificate dated nil Ext. PW2/F and Ext. PW2/G.

7. Respondents have examined Shri Chanpreet Singh Assistant Branch Manager, HPGB Chamba, District Chamba, H.P. by way of affidavit Ext. RW-1.

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

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

Issue No.1	: Yes
Issue No.2	: decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Relief.	: Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. The petitioner has contended that he was engaged as workman on daily wage basis without any appointment letter. He admitted that he has not annexed any document on record to prove that the salary was paid to him. He admits that his presence was not marked by the bank.

11. The respondents in his pleadings as well as affidavit of RW1 Shri Chanpreet Singh, Assistant Manager have asserted that the petitioner was not worker/employee of the bank. According to respondent the petitioner was not engaged on daily wage basis neither he worked till 16.5.2015. Quite contrary to this deposition, RW1 has stated in cross-examination that petitioner was engaged intermittently for scanning the accounts signatures and that he was paid per copy basis. This statement is contrary to the pleadings on behalf of the respondent bank this also imply that petitioner performed some sort of work with the respondent. The respondent deliberately suppressed this fact in their pleading before the court. The petitioner asserts that he even did cleaning and sweeping work but respondent had not produced record of any person who was performing cleaning work during 24.4.2014 to 16.5.2015. RW1 Shri Chanpreet Singh mentions that the petitioner was paid per copy however no record of such per copy payment is produced neither the record of the number of days for which the services of petitioner were utilized by the respondent is brought on the case file. The Hon'ble High Court of Himachal Pradesh in **State Bank of India & Anr. Vs. Puja, Latesh HLJ 2022 (HP)(1) 247** has observed in para no.9 and para no.15 as follows:—

> "9. The specific case of workman, as pleaded, that she was employed *w.e.f.* 9.6.2000 in the New Shimla Branch of the bank was neither denied nor otherwise rebutted by the bank hence, such fact was impliedly admitted. On the contrary, the bank raised the plea

that the workman was employee of the contractor with whom the contract for installation of generator set had come into being in August, 2002. The bank, however, admitted that workman was occasionally assigned the sweeping and cleaning work on need basis and was paid Rs. 50/- per day for such job, which was being paid to her in addition to Rs. 700/- per month as Generator set attendant by deducting the same from payable amount to the contractor as per contract. Thus, there was a clear admission of the bank to the effect that the workman was being paid Rs. 50/- as daily wage for sweeping and other office works assigned to her from petty cash. It was not the case of the bank that its concerned branch had some other incumbent for the job of sweeping and cleaning. It is hard to believe that a branch of State Bank of India that too in a thickly populated area of town would remain without sweeping and cleaning for days together. Viewed in aforesaid perspective adverse inference is liable to be drawn against the bank for not having produced best evidence to prove from its records actual payments made to the workman....."

15. Analysing the facts of instant case, in light of the exposition of law discussed hereinabove, it can safely be held to be falling in the zone of exception. The bank being a public sector undertaking, was expected to place on record true and correct facts. The stand of the bank that workman was not its employee and also having been deployed causally, as noticed above, is belied by record and proved otherwise. Considering the incorrect stand having been taken by the bank, there is no hesitation to infer unfair labour practice having been applied by the bank. The workman was proved to have worked continuously on daily wage basis for more than five years. It is not the case of the bank that its concerned branch had a regular sweeper to sweep and clean the branch. It cannot be visualized that the branch of a bank, that too none else than State Bank of India, would not require service of a sweeper to clean and sweep the business place regularly. It is also unimaginable that the said branch of the bank would require the service of workman for the purposes of sweeping and cleaning occasionally. Thus, the conduct of the bank/management clearly proves its intent to ostensibly employ the workman on casual or temporary basis and to continue her as such for years with the object of depriving her of the status and privilege of permanent workman, which as per Clause-10 of the 5th Schedule of the Act amounts to unfair labour practice....."

12. Non production of bank record qua the payment made to the petitioner during his working with the respondent bank leads the court to draw an adverse inference against the respondent which would invariably prove the case of petitioner being employed for more statutory period under the Act on daily wage basis. The employment of the petitioner by the respondents without keeping record of the payment being made to the petitioner as well as the record of number of days of employment appears to a deliberate act on behalf of the respondents to deprive the petitioner of consequential benefits. Termination of his services without following the procedure under the Industrial Disputes Act and not maintaining any record of the work amounts to unfair labour practice. It has been alleged by petitioner that after termination of his service other persons junior to him were appointed and were continued by the respondent. Respondents have failed to produce any record of the persons who were working as safai karamchari and also doing the work which was allegedly done by the petitioner during period of his alleged services with the respondents. Due to suppression of the material facts by the respondent the petitioner has vindicated his claim of continuous employment with the respondent bank and his illegal termination in violation of the provisions of Section 25-F of the Act. Accordingly issue no.1 is decided in the favour of petitioner.

Issue No.2

13. It has been proved from the oral as well as documentary evidence that the petitioner was employed by the respondent from year 2014 till the year 2015 as a safai karamchari. No evidence could be produced by the respondent to show that during the alleged interval of time other person was working as safai karamchari with the respondent bank. In these circumstances since the termination of the services of the petitioner w.e.f. May, 2015 was illegal and unjustified the petitioner is held entitled for reinstatement as daily wager safai karamchari w.e.f. May, 2015 along-with compensation to the sum of Rs.50,000/- in lieu of back wages. Hence this issue is decided accordingly.

Issues No.3

14. The maintainability of the petition was challenged on the ground that petitioner had never worked with the respondent bank however facts to the contrary emerges from the evidence as well as documentary evidence on record the claim petition is maintainable. Hence issue no.3 is decided in the favour of the petitioner.

Issue No.4

15. It was asserted on behalf of the respondent that the petitioner has no locus standi to file present petition as he had not worked with the respondent bank at any point of time. It further appeared that the petitioner had put in his work with the respondent for particular interval of time regarding which the facts were suppressed by the respondent hence the petitioner has the locus standi to file the present petition. Hence this issue is decided in the favour of the petitioner.

Issue No.5

16. The claim of the petitioner is alleged to be time barred. It is pertinent to observe that according to petitioner after his illegal termination he had time and again approached the respondent office asked them to re-engage him however his request was not accepted by the respondent. The petitioner had also raised the dispute before conciliation officer since 2015 and it appears that he was continuously pursuing his claim before the respondent bank. In these circumstances the present claim petition is not time barred hence this issue is decided in the favour of the petitioner.

Relief

17. In view of my discussion on the issues no. 1 to 5 the claim petition succeeds and is partly allowed. Since the termination of the services of the petitioner w.e.f. May, 2015 was illegal and unjustified the petitioner is held entitled for reinstatement as daily wager safai karamchari w.e.f. May, 2015 along-with compensation to the sum of Rs.50,000/- in lieu of back wages.Parties are left to bear their costs.

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

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

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

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

Reference No. : 55/2018

Date of Institution : 6.6.2018

Date of Decision : 28.11.2024

Shri Jagdish Kumar s/o Shri Brahm Dev, r/o Village Bhaleta,Tehsil Nurpur, District Kangra, H.P. . . *Petitioner*.

Versus

The Principal, Noorpur, Public School, Nurpur, District Kangra, H.P. . . *Respondent*.

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

For the Petitioner : Smt. Nitika Sharma, Ld. Adv.

For Respondent : Sh. Vivek Vashistha, Ld. Adv.

AWARD

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

> "Whether termination of the services of Shri Jagdish Kumar s/o Shri Brahm Dev, r/o Village Bhaleta, Tehsil Nurpur, District Kangra, H.P. *w.e.f.* 23-02-2017 who was employed as helper by the Principal, Noorpur Public Shcool, Nurpur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged by the respondent on daily wage basis as bus helper/conductor in the year 2008 and had continued to work in the said capacity upto 22.2.2017. It is submitted that the act and conduct of the petitioner was fully satisfactory upto the mark and he never gave any chance to the respondent or his superior and controlling officer of the respondent for any alleged misconduct. No warning letter or show cause notice was ever served to the petitioner. The petitioner had demanded for the regularization of his services however the Principal, Smt. Poonam Dogra, Manager Sh. Ravinder Dogra, Miss Preeti Pathania English Teacher and Miss Suman Clerk of the institution had victimized and harassed him. It is alleged that petitioner was beaten without any cause on 22.2.2017. He was called by the Principal in his office and he was verbally told that he was not allowed to enter the school/institution w.e.f. 22.2.2017 without any written order. It is further alleged that the respondent never served any show cause notice, charge-sheet against his allegation of misconduct. No inquiry was ever conducted against him. He continued the work in the institution from 2008 to 22.2.2017 and completed more than 240 days in each and every calendar year as well as 12 months preceding the date of his alleged termination. It is also alleged that respondent had not given any notice and pay in lieu of notice pursuant to the retrenchment. He was not paid any retrenchment compensation thus there was clear violation of mandatory provisions of Section 25-F (a) and (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). It is further alleged

that no communication was ever served to the appropriate Government i.e. Labour Commissioner i.e. mandatory under Section 25-F (c) of the Act. It is alleged that respondent has not only violated the provisions of the Act but also terminated the services of the petitioner in violation of principle of natural justice. It is further submitted that after the unlawful termination of the petitioner the respondent had not followed the principle of 'last come first go' and persons junior to the petitioner were retained by the respondent. No seniority list of conductor and helper was provided to the petitioner at the time of his termination and also before the Labour Inspector and Labour Officer, Nurpur. The institution of respondent has 14 buses and more than 1000 students studying in the institution which is registered under the Society Act, 1860. The institution of respondent comes under the definition of commercial establishment. The petitioner has alleged that the conduct of the respondent was unfair labour practice and the services of the petitioner have been terminated in highly unjustified, arbitrary, unconstitutional manner contrary to the mandatory provisions of the Act. In view of the above averments it is prayed that the termination of the petitioner dated 23.2.2017 may be set aside and respondent be directed to reinstate the services of the petitioner with full back wages and seniority and continuity in service along-with all consequential benefits. He has also prayed for the litigation costs.

3. In reply to the claim petition the respondent raised preliminary objections qua maintainability suppression of material facts, petitioner having resigned from his service etc. On merits it is asserted that petitioner was not engaged as bus helper/conductor in the year 2008 but he was working as a helper in Nurpur Public School and his main job was to keep the school toilet clean. He was engaged on 1.2.2013. Respondent has denied that on demand of regularization, the Principal, Manager and staff has harassed and victimized the petitioner. It is also denied that petitioner had continuously worked for 240 days in each calendar year from the year 2008 to 22.2.2017. According to respondent the petitioner himself gave resignation from service on 23.2.2017 hence question of issuance of notice and payment of compensation did not arise. It is alleged that a girl student on 22.2.2017 lodged a complaint with her teacher namely Ms. Preeti Pathania that the petitioner on 22.2.2017 after recess period went to the girls toilet and sexually harassed the victim. The entire incident was narrated by the victim to her school teacher who brought to the notice of Principal on 22.2.2017. The matter was referred to the committee of school on 23.2.2017 and emergency meeting was called where victim was asked by the committee to explain what has happened yesterday. The victim gave in writing to the committee regarding the incident and the committee asked the petitioner to explain. Thus the petitioner has admitted his fault in front of the committee. The committee recommended that the services of the petitioner must be terminated with immediate effect to keep the sanctity of the girl students in the school premises. The petitioner then pleaded before the committee not to report the matter to the police otherwise his future will be spoiled and he was ready to give resignation forthwith. The complaint was lodged with police on 23.2.2017 by the management but on the request of the mother of victim that the matter may not come to the knowledge of the public at large, the matter was further not pursued by the police/management. The petitioner in his own hand writing while admitted his fault gave resignation on 23.2.2017 and his resignation was accepted forthwith and all his emoluments were paid to him through his account by the school. Thus according to respondent the petitioner had himself voluntarily tendered the resignation but he again later pressured the victim to withdraw the charges against him so that he would be reinstated back in service, when the victim refused he started threatened her and as such this incident was narrated to the school authority and consequently FIR was lodged under Section 354-A of IPC and Section 8 of POCSO Act, 2012 was registered against the petitioner. It is denied that the petitioner was forced to give resignation by the respondent in-fact in the criminal case the petitioner was convicted by the trial court. It is also denied by the respondent that the services of the petitioner had been dispensed with without following the procedure under the Industrial Disputes Act. Other averments made in the petition are denied and it is prayed that the petition deserves to be dismissed.

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

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

1. Whether the termination of services of the petitioner by the respondent *w.e.f.* 23-02-2017 is/was illegal and unjustified, as alleged? . .*OPP*.

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

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

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

5. Whether the petitioner himself resigned from his service, as alleged? . . *OPR*.

Relief.

6. In order to prove his case the petitioner has examined Shri Pankaj Kumar as PW1 who brought the attendance record of the employees. He has also stated that no separate appointment letters are issued to the employees but EPF form was treated as appointment letter. The biometric system was started in the school in the year 2013. He was re-examined on 17.9.2022 and he has stated that the school does not maintain attendance register of Class-IV employees of the school and there is no record of petitioner pertaining to the year 2007 as the petitioner was engaged in the year 2013 as per record. The petitioner has produced his affidavit Ext. PW2 wherein he has reiterated the fact stated in the petition.

7. Respondents have examined Shri Arvind Dogra, Manager of Noorpur Public School Nurpur as RW1 and filed his affidavit Ext. RW1 and he has also produced on record appointment Ext. RW1/B, copy of attendance sheet Ext. RW/C, copy of judgment Ext. RW1/D, copy of resignation letter Ext. RW1/E and copy of report of sexual harassment committee Ext. RW1/F. The respondents have also examined one Smt. Bandana Kumari w/o Shri Rajinder Kumar by way of affidavit Ext. RW/A. She has stated on oath that she was working in Noorpur Public Shcool since 2007. She has further stated that Principal Poonam Dogra has constituted a sexual harassment committee in the school.

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

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

Issue No. 1 : No

Issue No. 2 : Decided accordingly

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

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

REASONS FOR FINDINGS

Issue No.1

10. The petitioner has alleged that his termination was illegal and not in accordance with provisions of the Industrial Disputes Act. According to petitioner he had raised a demand for regularization of his services due to which he was victimized, harassed and manhandled by the Principal, Manager and other staff members of the respondent. On 22.2.2017 he was called by the Principal and told he will not be allowed to enter the school *w.e.f.* 23.2.2017 and his services were terminated verbally on 23.2.2017. He alleges that he was terminated without any show cause notice neither any charge-sheet was ever served on him. It has been submitted by the petitioner that he was disengaged by the respondent in violation of the mandatory provisions of the Industrial Disputes Act, 1947.

11. On the contrary it is the stand of that the respondent that on 22.2.2017 a girl student had lodged a complaint with a teacher Ms. Preeti Pathania that accused has sexually harassed her and told her to not to disclose this incident but when the fact was brought to the notice of the Principal after complaint was confirmed the matter was referred to the sexual harassment committee of the school. The meeting of the committee was immediately convened. The victim as well as the petitioner were asked to explain the incident. The victim gave her complaint in writing to the committee and the petitioner has admitted his fault. The committee recommended the termination of the services of the petitioner but the petitioner has requested not to report the matter to police instead he expressed willing to render his resignation. RW1 Smt. Bandana Kumari, Principal was the member of sexual harassment committee of the school along-with Geeta Sharma, Sunita Sharma etc. She has deposed that committee had called the victim as well as the petitioner. On 23.2.2017 the petitioner confessed his offence before the committee and submitted his resignation the copy of resignation is Ext. RW1/E and report of committee Ext. RW1/F.

12. Learned counsel for the petitioner has vehemently argued that neither the charge-sheet nor any inquiry in accordance with the procedure established by the law was conducted. It is the contention that the termination of the petitioner was illegal and arbitrary. It is also submitted by the learned counsel that the petitioner was in-fact forced to resign.

13. The definition of retrenchment in accordance with the provisions of Section 2 clause (oo) of the Industrial Disputes Act, 1947 is as follows:—

> "(oo) ["retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-*[Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).]*
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or]"

14. The above definition implies that any voluntary retirement would not fall with the definition of retrenchment. PW2 Shri Jagdish Kumar (petitioner) has denied the allegations made

against him. He denied that he had requested the school authority not to remove him from the job as his career would be spoiled. He denied that he gave resignation on 23.2.2017. He asserted that he was forced by Ms. Poonam Dogra, Ms. Preeti, Ms. Bandna, Ms. Geeta, Ms. Savita and Ms. Sunita to tender his resignation.

15. As argued by the learned counsel for the respondent the petitioner had not disclosed in his statement as well as pleadings that the school had dealt with sexual harassment complaint against him and also the fact that a criminal case was subsequently registered. The findings of the criminal court have as of now culminated in conviction of the petitioner for the alleged offence. It is pleadings on behalf of the petitioner that the allegations against him were motivated with a view to throw him out of service as he was demanding his regularization. He however admitted in his cross-examination that FIR under Section 354A of IPC and Section 8 of POCSO Act has been registered against him and he has been convicted by the competent court. Suppression of material facts qua allegations of sexual harassment made against him by the petitioner would not lead this court to consider the contention of the petitioner regarding forceful resignation. It is only submitted in cross-examination of petitioner that he was forced to resign otherwise there is no oral or documentary evidence to suggest that the resignation of the petitioner was forcibly taken. In-fact it has been stated by the respondent's witnesses that the guardians of victim had initially not filed any complaint before police but after subsequent harassment by the petitioner they were forced to file a complaint. It is clear from the evidence on record that the petitioner had himself voluntarily tendered his resignation from his employment. There is no proof of any use of force. As already mentioned the FIR registered against the accused has already been resulted in the conviction of the accused. It is pertinent to mention here that termination of accused was not in consequence of inquiry proceedings initiated against him but as consequence of voluntary resignation. In these circumstances there was no violation of any provisions of the Industrial Disputes Act, 1947 by the respondent. Issue No.1 is accordingly decided in negative against the petitioner.

Issue No.2

16. The findings to the issue no.1 subsequent to above it has been proved that services of the petitioner were disengaged as he voluntarily resigned from service subsequent to charges of sexual harassment by one of the girl student. In these circumstances the petitioner is not been able to establish that the school authorities committed any violation of the provisions of the Industrial Disputes Act and he is hence not entitled for any service benefits. Hence this issue is decided accordingly.

Issues No.3 to 5

17. The onus of proving these issues on the respondent. Respondent has produced on record the complaint made by victim against accused. The subsequent inquiry proceeding by sexual harassment committee and the voluntary resignation submitted by the petitioner to the school authorities. Petitioner has himself suppressed the fact qua allegations made against him in the school which led to his disengagement by way of voluntarily resignation. The petitioner had not approached the court with clean hands and has suppressed material facts and it is also proved that he himself resigned from services. The present claim petition is not maintainable. Hence all these issues are decided in negative against the petitioner.

Relief

18. In view of my discussion on the issues no. 1 to 5 above, the claim made on behalf of the petitioner is not maintainable and services of the petitioner were terminated subsequent to voluntarily resignation. Parties are left to bear their costs.

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

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

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

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

Reference No. : 38/2017

Date of Institution : 07.01.2017

Date of Decision : 29.11.2024

Shri Haria Ram s/o Shri Jogal Ram, r/o Village Kyan, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P.

(now deceased) through his legal heirs:—

i. Shri Tek Chand s/o Haria Ram(deceased)

ii. Ms. Nisha Devi@ Pinki Devi (wife)

iii. Rishna Devi (daughter)

iv. Kaushiki (daughter) . . *Petitioners*.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P,
. . *Respondent*.

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

For the Petitioner : Sh. N.L.Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:—

"Whether alleged termination of the services of Shri Haria Ram s/o Shri Jogal Ram, r/o Village Kyan, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. during year, 1998 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 14-05-2015 after delay of about 17 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of about 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner was daily wage worker with the respondent in the year 1998 and 1999. He worked in Kyan nursery and Beat. He completed more than 240 days of continuous work. In September 1998 there was theft of cheed scants from the forest regarding which the information was given to Police Station Sunder Nagar. The criminal case remained pending before the court at Sunder Nagar for almost 10 years and was decided on 21.5.2010. The petitioner was not found involved in the case. He further asserts that his daily wage services were terminated by Divisional Forest Officer Kangoo on the pretext that the matter pertaining to the theft of cheed scants was under consideration before criminal court at Sunder Nagar. He also mentioned that petitioner would be reinstated after the final decision of the criminal court. Thereafter the petitioner was never reinstated by the respondent. Petitioner further asserts that as per the seniority list dated 31.3.2003 there are total 386 workers mentioned therein out of which 40 workers are junior to the petitioner. These persons not only continued their services with the respondent but have also been regularized. The petitioner alleges that respondent has conducted violation of Sections 25-B, 25-G, 25-F (a), 25-F (b) of the Industrial Disputes Act, 1947 and also violated the principle of 'last come first go'. The delay in raising industrial dispute was due to the fact that there was pendency of criminal case for about 11-12 years. In the light of these averments the petitioner has prayed that he may be reinstated in his services with seniority and continuity in service and all consequential benefits.

3. In reply to the petition preliminary objections qua maintainability has been raised. On merits, it is submitted that petitioner has never worked as daily wager with the respondent department and thus question of completion of 240 days of work does not arise. It is also mentioned that petitioner was not an accused in Police Challan No.478-1/1999 decided on 21.5.2010 regarding which the judgment is dated 21.5.2010. It is also asserted that since the petitioner never worked with the respondent his name was not incorporated in the seniority list. Other averments and claim made by the petitioner have been denied and it is prayed that petition as well as claim deserves to be dismissed.

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

1. Whether the act of termination of services of the petitioner by the respondent during year, 1998 is/was illegal and unjustified, as alleged? . . *OPP.*

2. Whether the delay of about 17 years in raising the dispute by the petitioner has frustrated the claim as alleged? . . *OPR.*

3. If issues no.1 & 2 are proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP.*

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

5. Relief

5. In order to prove the case of petitioner his son Shri Tek Chand has been examined since the petitioner has expired during pendency of the adjudication by way of affidavit Ext. PW1/A. He also produced seniority list Ext. PW1/B, copy of judgment dated 21.5.2010 Ext. PW1/C, copy of statement Ext. PW1/D, mandays chart Ext. PW1/E, legal heirs certificate Ext. PW1/F and Special Power of Attorney Ext. PW1/G in evidence.

6. Respondent has examined Shri Rakesh Katoch, IFS as Deputy Conservator of Forest, Suket Forest Division, Sunder Nagar by way of affidavit Ext. RW1/A. He has reiterated the facts stated in the reply.

7. I have heard the learned AR/Counsel for the petitioner as well as learned Dy. D.A. for the respondent at length and records perused.

8. 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
Issue No.3	:	Decided accordingly
Issue No.4	:	Partly Yes
Relief	:	Claim Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

9. It has been asserted by PW1 Shri Tek Chand that his father was engaged by the respondent as daily wage worker in Forest Range Kangoo during year 1998-1999. In his cross-examination he has denied that his father was never engaged by the department. The respondent has clearly denied that petitioner had ever worked with the respondent as daily wage worker. They have also relied upon the mandays Ext. PW1/E which has been supplied to the petitioner whereby the zero mandays have been shown for the years 1998, 1999 and 2000. It is important to peruse the reply on behalf of the respondent with regard to the application for production of documents. As per reply dated 17 January, 2020 the respondent has mentioned in point no.2 that the record/bill vouchers prior to 1999-2000 along with other record and articles were gutted in the fire incident during April, 2010 and hence not available in the record. It is clear that since 2010 the record of bills and vouchers prior to year 1999, 2000 was not available with the respondent. Quite contrary to this assertion the respondent had supplied Ext. PW1/E for the year 1998 and 1999 and 2000. As the respondent was not having the required particulars with respect to the mandays of the workers prior to the year 1999 and 2000 the mandays chart appears to be fictitious and wrongly prepared by the respondent. RW1 Shri Rakesh Katoch has stated that he is working as Deputy Conservator of Forest, Suket Forest Division since 6.6.2023. He denied that petitioner was appointed in the year 1998 and terminated in the year 1999. In this regard it is important to peruse the documents pertaining to Police Challan No.478-1/1999. The judgment is produced on record as Ext. P1 and the copy of the challan has also been produced on the case file. The perusal of the judgment as well copy of challan annexed with it shows that the complaint was made by the forest worker regarding the theft of cheed scants subsequent to which case under Sections 32, 33 of Indian Forest Act and

379,147, 353, 332, 336, 506 of IPC was registered at Police Station Sunder Nagar. The police complaint not only involved theft of forest wooden scants from forest but also assault of public servant. It was precisely the case of prosecution and it was also the complaint made before police that complainant Babu Ram along-with other various workers which also included Haria Ram (present petitioner) were assaulted by the accused person and in their presence the cheed scants have been stolen. Though it was argued by the learned Public Prosecutor for the State that the judgment in a criminal case cannot be relevant in a civil matter or in a civil dispute particularly under the industrial dispute in the present case. It is pertinent to mention here that judgment in a criminal trial is not relevant in a civil case except for the purpose of showing the fact of trial and conviction of it. The judgment of the court has been exhibited as Ex. P1. It is mentioned in the judgment itself that along-with Babu Ram, Haria Ram was also present at the spot. Haria Ram was also mentioned in the list of witnesses as important witness in the spot though he was not examined by the prosecution. In the light of above facts it is not disputed by the respondent that Haria Ram has been mentioned as an employee of the respondent at the time of registration of case FIR No.195 of 1998. The respondent has not been able to give any reasonable explanation as to why the name of Haria Ram was mentioned as witness of the complainants more specifically as an employee of the respondent during pendency of the trial. It is pertinent to mention here that the present dispute between the parties is of a civil nature. The petitioner has to establish his case to the extent of balance of probability. The statement of the petitioner coupled with the judgment Ext. P1 and the copy of police challan annexed with it clearly proved to the extent of probabilities that the petitioner was an employee of the respondent for the year 1998. This fact coupled with the fact that respondent has failed to produce any record of bill voucher and genuine mandays for the relevant period further assures to this court to believe the stand of the petitioner that he was working as daily wager employee of the respondent during year 1998 and 1999.

10. Though it has been established that the petitioner was working as an employee of the respondent during year 1998 and 1999 however the petitioner has not been able to prove that he has worked continuously for the period of 240 days so as to entitle him for relief under Section 25-F of the Industrial Disputes Act, 1947. In absence of any clear and cogent evidence or evidence to prove that the petitioner had completed 240 days of continuous service with the respondent the relief under Section 25-F of the Industrial Disputes Act, 1947 cannot be granted in the favour of the petitioner.

11. The learned Counsel/AR for the petitioner has submitted that though the petitioner was illegally terminated by the respondent form his service the juniors to the petitioner were retained in service and subsequently the persons were employed by the respondent without giving an opportunity or notice to the petitioner. RW1 Shri Rakesh Katoch has admitted that as per judgment Ext. P1 the petitioner has been shown as an employee/workman of respondent department. He further admits that the department has not produced the muster roll of the employees from the year 1998 to year 2003. He further admitted that all the persons described in Ext. PW1/B have also been regularized. He admits that Ext. PW1/B certain new workmen have also been engaged after the year 1999. The above admissions made by RW1 Shri Rakesh Katoch shows that though the petitioner was working with the respondent department since the year 1998 his services were terminated and the persons who were employed along-with him continued with their service with the department. Ext. PW1/B also shows that the fresh hands were appointed by the respondent after the year 1999. The above act of the respondent amounts to violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947.

12. The petitioner in the present case has admittedly raised industrial dispute after the considerable period of 17 years. It is important to peruse the pleadings as well as the statement made by PW1 which asserts that the petitioner was terminated on the suspicion after registration of criminal case regarding theft of cheed scants. It is also asserted in the pleadings that a criminal case

continued for 11 to 12 years in a criminal court. Petitioner asserts that he was assured by the concerned official that his services would be reinstated after the decision in the criminal case. The learned counsel/AR for the petitioner has vehemently argued that the petitioner is rustic villager who was working on daily wage basis with the respondent. On being assured by the official of the department he was terminated from his service but was never re-appointed by the respondent. The petitioner remained under the impression that he would be reinstated after the decision in the criminal case which took a long period almost 10 to 12 years. In these circumstances the case of petitioner may not be devoid of the relief which have been available to him under the Industrial Disputes Act. As further submitted the petitioner is unemployed and respondent has not produced any evidence to show that he was employed during period after his termination and they have produced the wrong record pertaining to the mandays of the petitioner. Learned counsel/AR has prayed that appropriate relief may be granted to the petitioner in this aspect. Learned Dy. D.A. has submitted that there is no evidence to show the employment of the petitioner with the respondent and since there has been delay in raising the dispute no relief can be granted in the favour of the petitioner.

13. It is already discussed above that the evidence on record leads the balance of probability to the effect that the petitioner was an employee of the respondent. It is not established that he had worked for continuously for a period of 240 days. It is proved from the cross-examination of RW1 that the employees who were appointed along-with petitioner have continued in services and fresh hands have also been deployed after the year 1999. Considering the fact though the dispute has raised by the petitioner after considerable time petitioner cannot be reinstated in his services though in respect of violation of Sections 25-G and 25-H of the Industrial Disputes Act and wrong cause to the petitioner can be compensated in terms of petition. The petitioner is hence entitled for lump sum compensation of Rs.1,00,000/- from the respondent. Accordingly issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

14. Hon'ble High Court of H.P. in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

> "8. Hon'ble Apex Court in case titled Prabhakar *v.* Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.
>
> Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice

and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

15. In the present case also it cannot be said that the dispute between the parties had died. Petitioner has asserted that he was assured by the respondent that he would be reinstated in his service after the conclusion of the criminal trial. Respondent has deliberately tried to produce wrong record pertaining to the mandays of the petitioner with the respondent department. The judgment of criminal court also mentions that the petitioner was described as an employee of the respondent though there has been delay of about 17 years in raising the dispute, as argued by the learned counsel/AR for the petitioner the same was on account of the fact that there was a criminal case pending with the criminal court after the registration of which the services of the petitioner were allegedly terminated. Considering the fact that the petitioner is rustic villager and he acted upon assurance made by the respondent delay was caused in raising the dispute. Such delay is liable to be condoned and claim of the petitioner cannot be frustrated on this ground, hence this issue is accordingly decided in the favour of the petitioner.

Issue No.3

16. Petitioner has established his claim under Sections 25-G and 25-H of the Industrial Disputes Act, 1947. As already mentioned above considering delay in raising the dispute the petitioner is held entitled for lump sum compensation of Rs.1,00,000/- only. It is pertinent to mention here that the petitioner Haria Ram has expired during the pendency of the matter, however, the above said amount be equally apportioned between the legal heirs of the deceased petitioner. Hence this issue is decided accordingly.

Issue No.4

17. It has been discussed in detail while deciding issues no.1 and 2 above that the petitioner has not been able to prove the completion of 240 days of continuous work with the respondent hence his claim regarding the violation of Section 25-F of the Industrial Disputes Act is not maintainable. The remaining aspect of the claim of the petitioner and relief under Section 25-G and 25-H of the Act is maintainable. This issue is decided partly in the favour of the petitioner.

Relief

18. In view of my discussion on the above issues, it is held that there had been violation of Sections, 25-G and 25-H of the Act by the respondent. The legal heirs of the deceased petitioner are

held entitled for compensation of Rs.1,00,000/- which is equally apportioned between them. Parties are left to bear their costs.

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

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

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

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

Reference No. : 564/2016

Date of Institution : 24.8.2016

Date of Decision : 30.11.2024

Shri Surjeet Singh s/o Shri Puran Chand, r/o Village Sanour, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner*.

Versus

1. The Engineer-in-Chief HPPWD, US Club, Shimla.

2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P.

. . *Respondents*.

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

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

For Respondent(s) : Sh. Pankaj Dhiman, Ld. Dy. D.A.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:

"Whether alleged termination of services of Sh. Surjeet Singh s/o Sh. Puran Chand, Vill. Sanour, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. during 3/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) The Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who worked as beldar on daily wages

basis during the 11/1998 to 3/1999, only for 109 days, and he raised his industrial dispute *vide* demand notice dated 7.6.2015 after 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged by HPPWD Division (B&R) Dharampur as daily wage worker along-with other workmen in the month of November, 1998 and completed 240 days in each calendar year as such the petitioner was covered under the definition of workman and the continuous service as defined under Sections 2(s) and 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). It is further submitted that the services of petitioner were terminated verbally w.e.f. 3/1999 by the respondent after few months of his joining without one month's prior notice and salary in lieu thereof. The department had terminated more than 2000 daily waged workmen in HPPWD Division Dharampur, District Mandi without following procedure under the Act. It is alleged that the respondents did not follow the principle of 'last come first go' after terminating the services of the petitioner and kept on employing and retaining workmen namely Roshani Devi, Mamta Devi and Inder Singh as such the respondent violated the provisions of Section 25-G of the Act. It is further alleged that after terminating the services of the petitioner the respondents employed many other fresh workers namely Ajay Kumar, Pradeep Kumar, Lekh Raj and Satya Devi in their establishment and no opportunity of re-employment was given to the petitioner. The respondent also terminated the services of 1697 workmen in June/July 2004 and some of them were re-engaged and no intimation and opportunity for re-employment was given to the petitioner. Petitioner had approached the respondent in the months of July, 2000, April, 2002, November, 2004, May, 2005, October, 2005 and March, 2006 in writing to reinstate him and provide him duty on the basis of seniority but the respondents expressed their inability to do the same. Since the petitioner had been making representations orally as well as in writing the industrial dispute was alive between the petitioner and respondents. It is also submitted that on 8.7.2005 respondent had retrenched 1087 workmen who filed their dispute under the Industrial Disputes Act in the year 2007 and 2008 about 500 workmen were reinstated by the court order and retrenchment order dated 8.7.2005 was quashed. The persons who have been reinstated in the department *w.e.f.* 30.12.2009 on the basis of award of this court including Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan. All these persons according to the petitioner were junior to the petitioner and also presently working with the respondents in different sub Divisions on regular basis. While reinstating these persons no opportunity was given to the petitioner for re-employment. The petitioner has raised the industrial dispute vide demand notice dated 7.6.2015. The Labour Officer had conducted conciliation proceedings but the same could be settled. Failure report under Section 12 (4) of the Act was forwarded to the appropriate Government who referred the dispute to this court. It is also submitted that one Sanjay Kumar who working under the respondent w.e.f. 21.6.1999 to 31.12.1999 who has completed only 153 days of service and was terminated by the respondent on 1.1.2000 raised industrial dispute against the department *vide* his demand notice dated 12.5.2009 after 10 years of delay. His claim was declined by the Labour Commissioner. The order of Labour Commissioner was assailed before Hon'ble High Court of H.P. in CWP No.8315/2012 and it was decided by Division Bench of Hon'ble High Court along-with 46 other connected matters in CWP No.5189/2012 titled as Kanta Devi & Ors. vs. State of H.P. and Ors. whereby Division Bench of Hon'ble High Court has held that the order passed by the Labour Commissioner were set aside with the directions to the respondent to reinstate the petitioners. The Hon'ble High Court passed the order dated 20.12.2012 which was not assailed before the Hon'ble Supreme Court thus the claim of the petitioner in that case was considered even after a delay of 11 years. Sanjay Kumar thereafter submitted his joining report and his services have been reinstated and subsequently regularized. It is further asserted that present dispute does not suffer from delay

and laches as considerable delay has already been condoned by in various judgments. The petitioner had prayed that the termination order dated 3/1999 may be set aside as is illegal and respondent be directed to reinstate the petitioner in the service with full back wages, seniority and continuity in service and all consequential benefits.

3. In reply respondents raised preliminary objections qua maintainability and petition suffering from delay and laches. On merits, it is admitted that petitioner was engaged on daily wage beldar in the month of 11/1998 and worked on daily wages upto 3/1999. It is further asserted that the petitioner left the job at his own sweet will and thus question of notice and salary in lieu thereof did not arise. With respect to persons mentioned in para no.3 it is asserted that these persons were engaged on muster roll basis on compassionate ground after approval from the Government as their parents had expired on duty and thus there was no violation of Section 25-G of the Act. It is admitted that in February, 2004 some workers were retrenched however by that time the petitioner had left the job at his own sweet will. It is also admitted that certain workers were re-engaged in phased manner after being retrenched in February, 2004. However it is again asserted that the petitioner had left his job by that time. Respondent admitted that on 8.7.2005 they retrenched the services of 1087 workmen however according to them the retrenchment was carried out after adopting all the codal formalities. By order of the court workmen were reinstated and regularized but again the petitioner had left his job during that period. The demand raised by the petitioner is alleged to be suffering from delay and laches specifically because he raised demand notice before Conciliation Officer after delay of 16 years of his alleged disengagement. Other averments and allegations were denied and it is prayed that the petition may be dismissed.

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

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

1. Whether termination of the services of petitioner by the respondents during March, 1999 is/was illegal and unjustified as alleged? . . *OPP*.

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

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

4. Whether the claim petition suffers from the vice of delay and laches, as alleged? . . *OPR*.

5. Relief

6. Petitioner in order to prove his case has examined Shri Khyali Singh s/o Shri Bhalkhu Ram by way of affidavit Ext. PW1/A. He stated on oath that he was engaged as supervisor in the year 1983 on daily wage basis and got regularized on 1.1.1994. He also states that the petitioner was engaged in HPPWD Division Dharampur in November, 1998 during his service tenure with the HPPWD Division Dharampur as supervisor the petitioner was allowed to work for few months and thereafter the department disengaged/terminated the petitioner in March, 1999 without any notice. He also states that the PWD Division Dharampur had not reissued muster roll in the name of petitioner Surjeet Singh for next month following his termination. The petitioner visited the concerned JE of the department many times with prayer to issue muster roll in his name but

department had never issued muster roll. Petitioner also requested him many times to re-engage him and reissue muster roll. He also states that the PWD Division Dharampur had engaged fresh workmen after termination of petitioner Surjeet Singh. The petitioner had many time visited the office of Executive Engineer, HPPWD Division Dharampur for 7-8 years continuously in his presence but PWD department did not re-engage him. He also produced on record copy of application dated 22.1.2002 Ext. PW1/B, copy of application dated 5.1.2004 Ext. PW1/C and copy of application dated 6.1.2006 Ext. PW1/D. P2 Shri Yogesh Chander, SDO HPPWD Dharampur has stated that as per record of muster roll pertaining to the petitioner there is no entry in the same to the effect that petitioner left the services at his own will. PW3 Shri Surjeet Singh has produced his affidavit along-with seniority list for the year 2000 Ex. P-1, seniority list for the year 2001 Ex. P-2, seniority list for the year 1998 Ex. P-3, seniority list for the year 1999 Ex. P-4, applications Ex. PW1/B to Ex. PW1/D along-with mandays Ext. P-5.

7. Respondents have examined Shri Vivek Sharma, Executive Engineer, HPPWD Dharampur by way of affidavit Ext. RW1/A wherein he reiterated the facts stated in the reply and also produced on record copy of mandays chart Ext. RW1/B.

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

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

Issue No.1	: Partly Yes
Issue No.2	: Decided accordingly
Issue No.3	: Partly yes
Issue No.4	: No
Relief	: Claim Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. It has been asserted on behalf of the petitioner that he was engaged by HPPWD Division Dharampur as daily wage worker from the month of November, 1998. He has asserted that he was duly covered under the definition of workman and definition of continuous service as defined under Section 2(s) and Section 25-B of the Industrial Disputes Act, 1947. Contrary to this the respondent has asserted that petitioner has worked intermittently with the respondent from November, 1998 till March, 1999 and he has never completed 240 days of continuous services as provided under Section 25-B of the Act. In this regard it is important to peruse the cross-examination of the petitioner. He has conceded during course of cross-examination that he was engaged as beldar in 1998 and that he had worked for 5-6 months only. He has denied that he had left the work out of his own free will however from the admission made by petitioner in his cross-examination as well as the mandays chart Ex. P-5 it is clear that he has worked only for five months i.e. from November, 1998 to March, 1999 with the department. Considering the mandays mentioned in the mandays chart he had not completed 240 days of continuous service with the respondents. In these circumstances the case of the petitioner is not covered under the provisions of Section 25-F and Section 25-N of the Industrial Disputes Act, 1947.

11. It is also the case of the petitioner that after his termination the persons who were junior to him have been appointed by the department and while engaging these person he was not

issued any notice or no intimation for re-employment had ever given to him. The various instances of engagement of workers after their retrenchment and termination have been mentioned in the claim petition as well as statement of the petitioner which are not denied by the respondents in their reply. In-fact RW1 Shri Vivek Sharma has admitted that petitioner had worked on muster roll basis till March, 1999. He denied that after March, 1999 the services of the petitioner were terminated without any notice and permission of appropriate government however no such record showing that notice being issued to the petitioner or any permission being sought from the appropriate government have been produced on the case file. He has asserted that petitioner had left the work at his own will. However he admitted that no notice was issued to the petitioner to rejoin his service later on. He has admitted that Ex. P1 is the list of daily wagers working w.e.f. 1.1.2000 to 31.12.2000. He has shown his ignorance to the suggestion that persons mentioned in serial no.1 to 834 were engaged afresh w.e.f. 1.1.2000. He also shown ignorance to the suggestion that the name of persons appearing from serial no.1 to 535 of Ext. P-2 were engaged afresh *w.e.f.* 1.1.2000. These facts have not been clearly denied by the respondents' witness RW1 Shri Vivek Sharma. Though he has stated that the department had not received any representation on behalf of the petitioner however he has admitted that there is no entry in the muster roll Ext. RW1/B to the effect that the petitioner had himself left the job w.e.f. March, 1999.

12. The respondents have admitted that the petitioner has worked with the respondent for almost five months. Admittedly the petitioner had not completed 240 days of continuous service so as to become entitle for benefit under Section 25-F of the Industrial Disputes Act, 1947. However since he was working with the respondents department and his services were terminated without any notice it was the right of the petitioner under Sections 25-G and 25-H of the Act to be re-engaged and it was the duty of the respondents to follow the principle of 'last come first go' in accordance with the Sections 25-G and 25-H of the Act. Respondents have alleged that petitioner had left the job of his own free will but there is no notice on the case file to show that he was directed to rejoin his service by the respondents. As mentioned in the claim petition and not expressly denied in the reply number of workers were engaged after the disengagement of the services of the petitioner. It is also clear from the seniority list Ext. P1 that the workers were engaged after the termination of the petitioner without giving any opportunity to the petitioner to rejoin the service which was his right under the provisions of the Industrial Disputes Act. Though the petitioner has not been able to prove the violation of Section 25-F of the Act but it has been established that the respondents have violated the provisions of Sections 25-G and 25-H of the Act. Hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

13. Though it is submitted on behalf of the petitioner that he was continuously visiting the department and raising the dispute however there is a delay of more than 15 years as he has failed to raise the dispute with the appropriate forum with the reasonable time. The extent of delay would not disentitle the petitioner from claiming his relief under the Act as he has established that he was continuously visiting the department in relation to his demand. It is argued on behalf of respondents that the correspondence with the department has not been proved. PW1 Shri Khayali Singh as retired supervisor has however stated on oath that the petitioner has presented certain applications regarding representations to the department and he was working with the department, he was retrenched without any notice and he (petitioner) has not left the job out of his own free will. Considering overall facts and circumstances and the delay in raising the dispute on behalf of the petitioner the compensation would be appropriate relief in this case. The petitioner is held entitled for the compensation of Rs.1,00,000/- along-with interest @ 9% from the date of his termination till the recovery of the amount. Hence this issue is decided accordingly.

Issue No. 3

14. The maintainability of the claim petition was challenged on behalf of the respondents. It has already been held while discussing issue no.1 that the petitioner is not entitled to the benefit of Section 25-F of the Act hence the petition was partly maintainable.

Issue No. 4

15. It has already been explained while deciding issue no.2 above that though there has been delay in filing the claim petition before the appropriate authority but considering the fact that the petitioner was continuously pursuing his demand with the concerned department by way of oral as well as written applications the period of delay deserves to be condoned hence this issue is decided in the favour of the petitioner.

Relief

16. In view of my discussion on the above issues, it is held that though there had been violation of Sections, 25-G and 25-H of the Act by the respondent, in this case, but since the petitioner had raised demand after a gap of 15 years his claim for reinstatement has thus been frustrated by delay and laches, hence reinstatement and other consequential service benefits cannot be granted in his favour, yet he is held entitled for compensation to the tune of Rs.1,00,000/- (Rupees One lakh only) along-with interest @ 9% from the date of his termination till the recovery of the amount. Parties are left to bear their costs.

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

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

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

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

Reference No. : 683/2016

Date of Institution : 03.10.2016

Date of Decision : 30.11.2024

Smt. Chanchla Devi w/o Shri Prem Singh, r/o Village & P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner*.

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.

2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P.

. . *Respondents*.

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

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

For Respondent(s) : Sh. Pankaj Dhiman, Ld. Dy. D.A.

AWARD

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

> "Whether alleged termination of services of Smt. Chanchla Devi w/o Sh. Prem Singh Village & P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P. during 5/1999 by the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (2) the Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 2/1999 to 5/1999, only for 99 days, and has raised her industrial dispute vide demand notice dated 30.3.2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and Justified? If not, keeping in view of working period as stated above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged by HPPWD Division (B&R) Dharampur as daily wage worker along-with other workmen in the month of February, 1999 and she was duly covered under the definition of workman as well as continuous service as defined under Sections 2(s) and 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). It is alleged that the services of petitioner were terminated verbally in May, 1999 after few months of her joining without any one month's prior notice and salary in lieu thereof. It is also submitted that department had terminated more than 2000 daily waged workmen in HPPWD Division Dharampur, District Mandi without following procedure under the Act. The petitioner also alleges that respondents did not follow the principle of 'last come first go' at the time of terminating/discharging the services of the petitioner and kept employing and retaining junior workmen namely Roshani Devi w/o Nag Ram, Mamta Devi w/o Hans Raj and Inder Singh s/o Narain Singh which is violated the provisions of Sections 25-G of the Act. After terminating the services of the petitioner respondents employed fresh workmen namely Ajay Kumar s/o Hari Chand, Pradeep Kumar s/o Bahadur Singh, Lekh Raj s/o Ram Saran and Satya Devi w/o Suresh Kumar without giving an opportunity of re-employment to applicant/ petitioner thus violating the provisions of Section 25-H of the Act. It is further alleged that after termination of the services of 1697 in the month of June/July 2004 some of workmen have been re-engaged by the respondent but no intimation of re-employment was ever given to the petitioner. The petitioner had approached the respondents in the month of December, January, 2000 and 2004, September, 2005 and January, 2006 to reinstate her and provide duties on the basis of seniority but department did not reinstate her neither provided any job even to the petitioner. The petitioner made several representations oral as well as in writing to the respondent department. On 8.7.2005 respondents has retrenched services of 1087 daily wage workers who raised dispute under the Act in the year 2007 and 2008. About 500 workmen were ordered to be reinstated by the order of the court and retrenchment order dated 8.7.2005 was quashed and set aside. The persons who were

reinstated by department *w.e.f.* 30.12.2009 on the basis of award of this court including Vijay Kumar s/o Mordwaj, Megh Singh s/o Bhagat Ram, Sanjay Kumar s/o Prem Singh, Raj Kumar s/o Sewak Ram, Roop Lal s/o Hariya Ram, Saroj Kumar w/o Ravinder Kumar and Malkeet Khan s/o Bhagat Khan who were all juniors to the applicant/petitioner. While reinstating the above workmen no notice was ever given to the petitioner for the purpose of re-employment. The petitioner has raised demand notice on 8.6.2015 before Labour-cum-Conciliation Officer, Mandi where the matter could not be resolved hence reference was made before this court. It is also submitted that one Sanjay Kumar s/o Purbia Ram was also working with the respondent *w.e.f.* 21.6.1999 to 31.12.1999 who has completed only 153 days of service thereafter his services were terminated, he raised a dispute against the department and after delay of 10 years his case was declined by Labour Commissioner on 16.3.2012. The said workman assailed the order before the Hon'ble High Court of H.P. *vide* CWP No. 8315/2012 and Division Bench of Hon'ble High Court in the same CWP and 46 other connected matters in CWP No.5189/2012 titled as Kanta Devi & Others vs. State of H.P. and Others where the orders of Labour Commissioner were set aside with the directions to the respondent to reinstate the services of the petitioners. Similarly other example with regard to condonation of delay in raising the industrial dispute have also been mentioned in the claim. It is prayed on behalf of the petitioner that termination dated 5/1999 of the services of the petitioner may be set aside and she (petitioner) may be reinstated in her service with full back wages, seniority and continuity in service along-with all consequential benefits.

3. In reply respondents raised preliminary objections qua maintainability and petition suffering from delay and laches. On merits, it is asserted that the petitioner was engaged as daily wage beldar on muster roll basis and worked *w.e.f.* 2/1999 to 5/1999 only for 99 days and thereafter she left her job out of her own sweet will. The petitioner was not retrenched by the respondents and she never completed 240 days of work. Other averments made in the petition including alleged violation of the provisions of Sections 25-G and H of the Act have also been denied. According to respondents they had made retrenchment in February, 2004 but by that time applicant/petitioner had left her job and all the retrenched workers were re-engaged by the orders of competent authority and again 1087 workmen were retrenched against the provisions of Section 25-N of the Act but by that time petitioner had also left the work out of her own free will. All other cases as mentioned by the petitioner are alleged to be based on separate merits. It is time and again reiterated that at the time of passing of above orders and reinstated the workers petitioner had left the work out of her own will. It is prayed that the petition may be dismissed.

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

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

1. Whether the termination of the services of petitioner by the respondents during May, 1999 is/was illegal and unjustified as alleged? . . *OPP*.

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

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

4. Whether the claim petition suffers from the vice of delay and laches, as alleged? . . *OPR*.

5. Relief

6. Petitioner in order to prove her case has examined Shri Khyali Singh s/o Shri Bhalkhu Ram by way of affidavit Ext. PW1/A. He stated on oath that he was engaged as supervisor in the year 1983 on daily wage basis. He got regularized on 1.1.1994. He retired on 30.6.2010 as supervisor from Dharampur Division HPPWD Dharampur, District Mandi, H.P. Smt. Chanchla Devi (petitioner) was engaged by HPPWD Division Dharampur, District Mandi in January, 1999 and during his service tenure with HPPWD as supervisor. Petitioner works for few months thereafter respondent disengaged/terminated her service without notice. He also states that Chanchla Devi was subject to his control and supervision and when he was engaged as daily wager. He also states that PWD Dharampur Division had not re-issued muster roll in the name of the petitioner Chanchla Devi for the next month following her termination. Chanchla Devi had visited the concerned JE of the department many times with prayers to issue muster roll in her name but department had never issued muster roll. PWD Dharampur Division had engaged fresh workmen after termination of the petitioner. She had visited the office of Executive Engineer, PWD Dharampur for 7-8 years continuously many times in his presence with written application to re-engage her but department did not re-engage and did not issue muster roll to the petitioner. He has produced on record copy of application dated 22.1.2002 Ext. PW1/B, copy of application dated 5.1.2004 Ext. PW1/C and copy of application dated 6.1.2006 Ext. PW1/D. PW3 Smt. Chanchla Devi has produced her affidavit Ext. PW3 and seniority list for the year 2000 Ex. P1, seniority list for the year 2001 Ex. P-2, applications Ex. PW1/B to Ex PW1/D and mandays chart Ex. P-3.

7. Respondents have examined Shri Vivek Sharma, Executive Engineer, HPPWD Dharampur by way of affidavit Ext. RW1/A and also produced on record copy of mandays chart Ext. RW1/B.

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

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

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	Partly yes
Issue No.4	:	No
Relief	:	Claim Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. It has been asserted on behalf of the petitioner that she was engaged by HPPWD Division Dharampur as daily wage worker from the month of February, 1999. She has asserted that she was duly covered under the definition of workman and definition of continuous service as defined under Section 2(s) and Section 25-B of the Industrial Disputes Act, 1947. Contrary to this the respondent has asserted that petitioner has worked with the respondent only for the period of four months and she has never completed 240 days of continuous services as provided under Section 25-B of the Act. In this regard it is important to peruse the cross-examination of the

petitioner. She has conceded during course of cross-examination that she was engaged as beldar in 1999 and that she had worked only for four months. She has denied that she had left the work out of her own free will however from the admission made by petitioner in her cross-examination as well as the mandays chart Ex. P-3 it is clear that she has worked only for four months *i.e.* from February, 1999 to May, 1999 with the department. Considering the mandays mentioned in the mandays chart she had not completed 240 days of continuous service with the respondents. In these circumstances the case of the petitioner is not covered under the provisions of Section 25-F and Section 25-N of the Industrial Disputes Act, 1947.

11. It is also the case of the petitioner that after her termination the persons who were junior to her have been appointed by the department and while engaging these person she was not issued any notice or no intimation for re-employment had ever given to her. The various instances of engagement of workers after their retrenchment and termination have been mentioned in the claim petition as well as statement of the petitioner which are not denied by the respondents in their reply. In-fact RW1 Shri Vivek Sharma has admitted that petitioner had worked on muster roll basis till May, 1999. He denied that after May, 1999 the services of the petitioner were terminated without any notice and permission of appropriate government however no such record showing that notice being issued to the petitioner or any permission being sought from the appropriate government have been produced on the case file. He has asserted that petitioner had left the work at her own will. However he admitted that no notice was issued to the petitioner to rejoin her service later on. He has admitted that Ex. P1 is the list of daily wagers working *w.e.f.* 1.1.2000 to 31.12.2000. He has shown his ignorance to the suggestion that persons mentioned in serial no.75 to 113 were engaged afresh *w.e.f.* 1.6.1999 which are in red circle Mark-A and Mark-B. He also shown ignorance to the suggestion that the name of persons appearing from serial no.1 to 12 of Ext. P-2 were engaged afresh *w.e.f.* 1.1.2000 which are in red circle as Mark-C. These facts have not been clearly denied by the respondents' witness RW1 Shri Vivek Sharma. Though he has stated that the department had not received any representation on behalf of the petitioner however he has admitted that there is no entry in the muster roll Ext. RW1/B to the effect that the petitioner had herself left the job *w.e.f.* June, 1999.

12. The respondents have admitted that the petitioner has worked with the respondent for almost four months. Admittedly the petitioner had not completed 240 days of continuous service so as to become entitle for benefit under Section 25-F of the Industrial Disputes Act, 1947. However since she was working with the respondents department and her services were terminated without any notice it was the right of the petitioner under Sections 25-G and 25-H of the Act to be re-engaged and it was the duty of the respondents to follow the principle of 'last come first go' in accordance with the Sections 25-G and H of the Act. Respondents have alleged that petitioner had left the job of her own free will but there is no notice on the case file to show that she was directed to rejoin her service by the respondents. As mentioned in the claim petition and not expressly denied in the reply number of workers were engaged after the disengagement of the services of the petitioner. It is also clear from the seniority list Ext. P1 that the workers were engaged after the termination of the petitioner without giving any opportunity to the petitioner to rejoin the service which was her right under the provisions of the Industrial Disputes Act. Though the petitioner has not been able to prove the violation of Section 25-F of the Act but it has been established that the respondents have violated the provisions of Sections 25-G and 25-H of the Act. Hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

13. Though it is submitted on behalf of the petitioner that she was continuously visiting the department and raising the dispute however there is a delay of more than 15 years as she has failed to raise the dispute with the appropriate forum with the reasonable time. The extent of delay would

not disentitle the petitioner from claiming her relief under the Act as she has established that she was continuously visiting the department in relation to her demand. It is argued on behalf of respondents that the correspondence with the department has not been proved. PW1 Shri Khayali Singh a retired supervisor has however stated on oath that the petitioner has presented certain applications regarding representations to the department and she was working with the department, she was retrenched without any notice and she (petitioner) has not left the job out of her own free will. Considering overall facts and circumstances and the delay in raising the dispute on behalf of the petitioner the compensation would be appropriate relief in this case. The petitioner is held entitled for the compensation of Rs.1,00,000/- along-with interest @ 9% from the date of her termination till the recovery of the amount. Hence this issue is decided accordingly.

Issue No.3

14. The maintainability of the claim petition was challenged on behalf of the respondents. It has already been held while discussing issue no.1 that the petitioner is not entitled to the benefit of Section 25-F of the Act hence the petition was partly maintainable.

Issue No.4

15. It has already been explained while deciding issue no.2 above that though there has been delay in filing the claim petition before the appropriate authority but considering the fact that the petitioner was continuously pursuing her demand with the concerned department by way of oral as well as written applications the period of delay deserves to be condoned hence this issue is decided in the favour of the petitioner.

Relief

16. In view of my discussion on the above issues, it is held that though there had been violation of Sections, 25-G and 25-H of the Act by the respondent, in this case, but since the petitioner had raised demand after a gap of 15 years her claim for reinstatement has thus been frustrated by delay and laches, hence reinstatement and other consequential service benefits cannot be granted in her favour, yet she is held entitled for compensation to the tune of Rs.1,00,000/- (Rupees One lakh only) along-with interest @ 9% from the date of her termination till the recovery of the amount. Parties are left to bear their costs.

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

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

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

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

Reference No. : 55/2017

Date of Institution : 24.1.2017

Date of Decision : 30.11.2024

Shri Sanjay Kumar s/o Shri Galo Ram, r/o Village Kulbra, P.O. Awan, Tehsil Bhattiyat, District Chamba, H.P. . . *Petitioner*.

Versus

1. The Managing Director, M/S Shakti Hydro Electric Company Private Limited, Regd. Office D-III, Defence Colony, New Delhi (Head Office).

2. The Site Manager, M/S Shakti Hydro Electric Company Private Limited, Ubharh Small Hydro Project 2.4 MW, Village Kahri, P.O. Awan, Tehsil Bhattiyat, District Chamba, H.P. . . *Respondents*.

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

For the Petitioner : Sh. Nikhil Shukla, Ld. Adv.

For Respondent(s) : Ms. Arti, Ld. Adv.

AWARD

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

> "Whether termination of services of Shri Sanjay Kumar s/o Shri Galo Ram, r/o Village Kulbra, P.O. Awan, Tehsil Bhattiyat, District Chamba, H.P. *w.e.f.* 01-01-2015 by (i) the Managing Director, M/s Shakti Hydro Electric Company Private Limited, Regd. Office D-III, Defense Colony, New Delhi (Head Office) and (ii) the Site Manager, M/s Shakti Hydro Electric Company Private Limited, Ubharh Small Hydro Project 2.4 MW, Village Kahri, P.O. Awan, Tehsil Bhattiyat, District Chamba, H.P. (site office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/ Management?"

2. The brief facts as stated in the claim petition are that for installation and carrying out of the M/s Shakti Hydro Electric Company Private Limited at place Ubharh Small Hydro Project 2.4 MW at Village Kahri, P.O. Awan, Tehsil Bhattiyat, District Chamba, H.P. the respondents contacted the Villagers and their land was taken for installation for the project. It was agreed that whoever will give land for this project would be given employment. Respondents contacted the maternal Aunt (Maasi) of the petitioner namely Jatti Devi w/o Late Shri Bisna, r/o Village Kulbara, P.O. Awan, Tehsil Bhattiyat, District Chamba to give some portion of land to installation of the project in the year 2008. On assurance and after due agreement with Smt. Jatti Devi that her nephew (Bhanja) i.e. petitioner would be given employment by the respondent, Smt. Jatti has mutated a piece of land bearing khasra no.984 measuring 00-01-00 Bigha in the name of Shakti Hydro Electric Pvt. Ltd. vide mutation no.619 dated 24.1.2009 situated at Mohal Kahri, Tehsil Bhattiyat, District Chamba, H.P. It is further submitted that the petitioner was given appointment as unskilled worker/helper by the respondent on 15.9.2013 vide appointment letter on monthly salary of Rs.3300/- which was later on revised to Rs. 4500/-. An appointment letter was also given to the petitioner vide which his services were to be superannuated at the age of 58 years. It is further submitted that the petitioner joined services of the respondent on 1.7.2010 and complied with all terms and conditions in the appointment letter. 29 persons were appointed as worker/helper along-with petitioner. One Sanjeet Kumar and Anil who were President and Vice President of the union of the workers were also joined the services. The petitioner had joined his service on 1.7.2010 and

thereafter carried his work with sincerity and dedication. Petitioner however, was given a termination order no.UHLM/08 dated 30.12.2014 whereby his services were terminated. The termination was carried on the pretext that company was facing huge financial loss and they were not in a position to handle surplus employees. It was promised that in future if the company would need any further recruitment the persons terminated would be recruited on priority basis. Out of 29 workers, 10 workers' services were terminated including the petitioner and one Sanjeet Kumar and Anil Kumar. It is alleged that no benefits of EPF were ever disbursed to these persons. Due to this the union of the workers had raised agitation. The company management called the terminated employees and other union person for reconciliation and compromise was arrived between union and the company officers. The petitioner and another ousted terminated workers namely Raj Kumar, Pawan Kumar, Kapil, Sanjeev Kumar, Prem Kumar, Ritesh Kumar, Kamal Kishore were kept out of this meeting. The terminated workers namely Sanjeet Kumar, Pradhan of union and Anil Kumar, Up Pradhan of union accompanied to attend the meeting. It is alleged that in connivance with the respondent Pradhan and Up Pradhan of the union entered into compromise on dated 8.1.2015 and the petitioner and other workers were asked merely to sign the compromise. It is also alleged that Pradhan and Up Pradhan Sanjeet and Anil in connivance with the respondent gave assurance to subside the agitation but the petitioner was debarred from his service even though these persons junior to him were re-employed. No reason was assigned as to why petitioner being senior in service and his service was debarred. Petitioner also asserts that he completed four years of continuous and had worked for 240 days in each calendar year and as such he was entitled for the benefit of regularization including pay scale and allowances and other benefits of EPF with retrospective effect. It is alleged that respondents have not only violated the provision of the Industrial Disputes Act but also fundamental right granted to the petitioner under Article 14 & 16 and 39-D of the Constitution of India. During his tenure with the respondent the petitioner was never served any kind of show cause notice nor any charge-sheet was ever served to him. The persons junior to the petitioner were re-appointed in the service thus respondents had committed violation of the Industrial Disputes Act,1947. The petitioner is prayed that he be held entitled for the reinstatement of his services like his junior workmen along-with all consequential monetary benefits *i.e.* salary, compensation EPF etc.

3. In reply to the claim petition preliminary objections qua maintainability, lack of jurisdiction, cause of action, locus standi, estopple and suppression of material facts etc. have been raised. On merits, the respondents have denied that they contacted the Villagers whose land was to be taken for installation of power project. It is also denied that they agreed whoever will give land for project one of their relation would be given an employment. It is asserted that maternal aunt of petitioner had sold land on higher prices to the respondent and earned huge profit for selling piece of land. The petitioner however was appointed as unskilled worker and appointment letter was issued containing certain terms and conditions. It is denied that from the date of joining the petitioner was serving the company to the satisfaction of the respondents. It is alleged that petitioner along-with other workers had ruined the healthy and working atmosphere of the company. It is also denied by the respondents that petitioner rendered continuous service of 240 days in each calendar year and was also entitled for regularization of his service. Respondents denied violation of the rights of the petitioner under the provisions of the Industrial Disputes Act, 1947 as well as provisions of Constitution of India. Other averments made in the petition were denied and it is prayed that the petition may be dismissed.

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

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

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 01-01-2015 is/was improper and unjustified as alleged? . . *OPP*.

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

3. Whether the claim petition is not maintainable in the present form? . .*OPR*.

4. Whether this court has no jurisdiction to file the present case as alleged? . . *OPR*.

5. Whether the petitioner has no locus standi to file the case as alleged? . . *OPR*.

6. Whether the petitioner has no cause of action to file the present case as alleged? . . *OPR*.

7. Whether the petitioner has not approached the Court with clean hands as alleged? . . *OPR*.

8. Whether the petitioner has suppressed the material facts from the Court as alleged? . . *OPR*.

Relief

6. Petitioner in order to prove his case has examined Shri Anup Kumar s/o Prithi Chand, Project Manager, M/s Shakti Hydro Electric Company as PW1 who stated on oath that he brought the original record regarding worker attendance register from April, 2018. He has shown his ignorance to the effect that Sanjay Kumar who had been terminated was again re-employed by the company. He also shown his ignorance to the suggestion that Prem Raj, Sanjeev Kumar along-with other employees who were disengaged along-with petitioner are still working and their services were re-engaged by the company. He has proved on record the appointment letter dated 15.9.2013 and signatures of Managing Director of the company on confirmation of letter petitioner. PW2 Smt. Jatti Devi has stated on oath that in the year 2009 respondents have taken her land of Villagers for the purpose of project. She had also given her land by way of registry and she was assured that one of her relative would be given job/employment with the respondents. She alleges that after some years her nephew Sanjay Kumar was thrown out of his employment by the respondents. PW3 Sanjay Kumar (petitioner) has produced his affidavit Ext. PW3/A wherein he reiterated the facts stated in the petition. He also produced on record salary slips for June 2011 Ext. PW3/B, another salary slips for the year 2013 and 2014 Ext. PW3/C, letter dated 15.9.2013 Ext. PW3/D, letter of confirmation Ext. PW3/E, termination letter dated 20.12.2014 Ext. PW3/F, final settlement Ext. PW3/G, letter to Labour Commissioner dated 9th June, 2015 Ext. PW3/H and report under Section 12(4) Ext. PW1/J.

7. Respondents have examined Shri Sanjeev Kumar s/o Tilak Raj as RW1 who has stated on oath that he was working in M/s Shakti Hydro Electric Company where the petitioner was appointed as unskilled workman. At the commencement of the project some land was purchased from Villagers and company compensated them by giving services in the company and compensated with money with market value. Massi of the petitioner had given a piece of land and taken payment on market value. Company issued an appointment letter which initially the petitioner denied to sign. He also alleges that petitioner along-with other workers indulged illegal activities and blemished the reputation of the company. He alleges that petitioner along-with local workers escaped from the work and carried out work against the company and did not obey the instructions of senior officers. As construction work was completed it was intimated to the

petitioner at that time of his initial appointment that he was only appointed as helper for construction work and he had agreed. Company had paid required compensation and one month's salary in advance in lieu of retrenchment notice. The remaining amount was paid on 20th February, 2015. It is alleged that petitioner did not create working culture in the company and was not entitled for regularization. RW2 Shri Anoop Kumar is also unskilled workman in M/s Shakti Hydro Electric Company. He has made statement similar to RW1 Shri Sanjeev Kumar. RW3 Shri Anoop Singh, Site Manager of Shakti Hydro Electric Company has stated the case of the respondents by way of affidavit Ext.RW3/A. He also produced cash vouchers Ext. RW3/B to Ext. RW3/E and the full and final receipt Ext. RW3/F.

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

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

Issue No.1	:	Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Issue No.7	:	No
Issue No.8	:	No
Relief	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner has submitted in his affidavit that for installation and carrying out of the M/s Shakti Hydro Electric Company Private Limited the respondents had taken the land of his Massi Smt. Jatti Devi with the assurance that petitioner would be given employment permanently. On this assurance his Massi Smt. Jatti Devi mutated a piece of land in the favour of respondents. Smt. Jatti Devi is examined as PW2 and in her affidavit she has asserted this fact. In cross-examination however she has stated that she gave the land for nominal price. She however states that an amount of Rs.6000/- was given and the land was transferred by way of Sale Deed. She admits that no agreement was entered into between company and her that family member from their family shall be engaged by the company in lieu of the land. She however admits that she had sold land to the respondent on the rate prevalent at the relevant time and further admits that respondents did not assure her family member shall be engaged in the company. In view of the statement of Smt. Jatti Devi the contention of the petitioner to the effect that his services were engaged in lieu of transfer of land from his Massi Smt. Jatti Devi is not proved.

11. It is asserted by the petitioner that he was employed in service by the respondents on 1.7.2010. He however alleges that *vide* termination order dated 30.12.2014 his services were terminated and he was assured that in future whenever the services would be required he would be given preference. In this regard the respondents have not denied that the petitioner was working as an unskilled worker. It is however asserted that he was appointed vide appointment letter dated 15.9.2013. The respondents denied that the employment was given in lieu of transfer of land. It is however alleged by the respondents that petitioner along with other workers indulged in illegal activities and tried to blemish of the reputation of the company. It was already communicated to the petitioner at the time of his employment that he would be engaged as helper for construction work. The act and conduct of the petitioner was alleged to be in violative of the rules of services. It is also asserted by the respondents that company had paid all the required compensation to the petitioner and had also paid one month's salary in advance in lieu of retrenchment notice in the account of petitioner and remaining amount was paid on 20.2.2015 thus no rights of petitioner have been violated. It is important to peruse the cross-examination of the petitioner who admits that the settlement was entered into between him and the respondents before Labour Department. He admits as correct that he received full and final payment for tenure for which he has worked with the company. He however denies that all the dues were paid to him by the company. The copy of the settlement annexed with Ext. PW3/H has been produced in the case file which is alleged to be settlement executed between the petitioner along-with other workers and the respondent company. Though it is asserted by the respondents that they have not violated any of the provisions of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947. The evidence on record clearly established that though an agreement Ext. PW3/H was entered and communicated to Sub Divisional Magistrate, Labour Officer, Chamba, Managing Director, M/s Shakti Hydro Electric Company and President/General Secretary of Workers of M/s Shakti Hydro Electric Company. It was however that the necessary permission/intimation under Section 25-F Clause (c) of the Industrial Disputes Act has not been given to the appropriate government preceding the retrenchment. Section 25-F produces as follows:—

25F. Conditions precedent to retrenchment of workmen:

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

(a) the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:[* * *] *[Proviso omitted by Act 49 of 1984, Section 32 (w.e.f. 18.8.1984).]*

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day's average pay [for every completed year of continuous service] *[Substituted by Act 36 of 1964, Section 14, for " for every completed year of service" (w.e.f. 19.12.1964).]* or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.] *[Inserted by Act 36 of 1964, Section 14 (w.e.f. 19.12.1964).]*

12. It is important to peruse the provision of Section 25-N of the Industrial Disputes Act in accordance with the provisions of Section 25-N which reads as follows:—

"(1),'no workman employed in any industrial establishment to which this Chapter applies, 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 three months 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; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

13. The appropriate procedure with regard to the permission qua retrenchment of the workman has been provided under the provisions of Section 25-F Clause (c) and Section 25-N of the Industrial Disputes Act. It appears that though a settlement had been arrived between the workers and the respondents in presence of the officers of the State but no prior or subsequent permission from the appropriate authority in the prescribed manner stating the reasons for the retrenchment has been obtained as per the procedure of Section 25 Clause N of the Industrial Disputes Act. This amounts to violation of the basic mandatory provisions of the Industrial Disputes Act and thus the respondents have violated the provisions of Section 25 Clause F of the Industrial Disputes Act. The retrenchment of the petitioner has been carried out without mandatory notice and subsequent permission from the appropriate authority.

14. The respondents have denied that they have employed the workers after the alleged retrenchment of the petitioner. It is however important to peruse the cross-examination of RW1 Shri Sanjeev Kumar who has admitted that one Vijay Kumar and Surjit were employed by the respondents in the year 2011 and they are still working with the respondents. Similarly RW3 Shri Anoop Singh has also admitted that son of Des Raj has been given appointment subsequently. The petitioner has also produced on record the seniority list Ext. PW3/B. A careful perusal of the seniority list of June 2011 shows that many of the workmen who have been employed in the year 2010 and subsequently in 2011 also. This clearly implies that after retrenchment of the petitioner in the year 2010 subsequently new hands have been deployed by the respondents company. The above act and conduct of the respondents company was in clear violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947. This becomes more evident as they had themselves undertaken at the time of retrenchment of the petitioner to employ him as and when new workers would be deployed by them. Not only the termination of the petitioner was in violation of the provisions of Sections 25 of Clause F and Clause N of the Industrial Disputes Act but subsequently the said termination was also violative the provisions of Sections 25-G and 25-H of the Industrial Disputes Act. Issue no.1 is accordingly decided in the favour of the petitioner.

Issue No.2

15. It has been proved from the oral as well as documentary evidence produced before this court that even though the written agreement was executed between the workers including the petitioner and the respondents however the retrenchment of the petitioner was in violation of the basic provisions of the Industrial Disputes Act by not offering any employment to the petitioner subsequently and also violating the principle of 'last come first go'. It is not disputed that petitioner had worked continuously for 240 days in the year preceding the date of his retrenchment. Hence in these circumstances the petitioner is entitled for reinstatement along-with seniority and continuity of service from the date of his retrenchment and compensation of Rs.50,000/- in lieu of back wages. Hence this issue is decided accordingly.

Issue No.3

16. The maintainability of the petition was challenged on the ground that petitioner has been retrenched after following the due process in accordance with the provisions of the Industrial Disputes Act. Facts contrary to the same have emerged from the evidence of the case file hence the petition is maintainable and this issue is decided in the favour of the petitioner.

Issue No.4

17. It has been adjudicated between the parties subsequent to the reference made by the appropriate authority, this court has jurisdiction to try the dispute, hence this issue is decided in the favour of the petitioner.

Issues No. 5 & 6

18. The petitioner was retrenched by the respondents in violation of the principles and provisions of the Industrial Disputes Act hence the petitioner has locus standi and cause of action to file the present petition. Accordingly these issues are also decided in the favour of the petitioner.

Issues No.7 & 8

19. It is constantly alleged by the respondents that petitioner was not proper in his conduct during the time of his employment with the respondents however in the evidence of any notice or an inquiry and disciplinary action were taken by the respondents. On the contrary it is established that respondents had dispensed with the services of the petitioner in violation of the provisions of the Industrial Disputes Act. The petitioner has approached the court with clean hands without suppression of any material facts, hence both these issues are decided in the favour of the petitioner.

Relief

20. In view of my discussion on the issues no. 1 to 8 above, the claim petition succeeds and is partly allowed. The respondents are directed to reinstate the services of the petitioner along-with seniority and continuity in service along-with compensation of Rs.50,000/- in lieu of back wages. Parties are left to bear their costs.

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

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

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

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

Reference No. : 37/2020

Date of Institution : 02.3.2020

Date of Decision : 30.11.2024

Shri Om Prakash s/o Shri Sukho Ram, r/o Village Thalla, P.O. Rajera, Tehsil & District Chamba, H.P. . . *Petitioner*.

Versus

1. The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P.(Principal Employer).

2. The Director, M/s IL&FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. . .*Respondents*.

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

For the Petitioner : Nemo

For Respondent No. 1 : Sh. Akshay Jaryal, Ld. Adv.

For Respondent No. 2 : Ms. Himakshi Gautam, Ld. Adv.

AWARD

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

> "Whether the termination of services of Shri Om Prakash s/o Shri Sukho Ram, r/o Village Thalla, P.O. Rajera, Tehsil & District Chamba, H.P. by (i) The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P. (ii) The Director, M/S IL&FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P., *w.e.f.* 01-06-2019, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employer?"

2. The petitioner in the present case failed to appear before this court on 18.11.2024 at Chamba. The report shows that the petitioner was duly served for the said date. Despite due service and knowledge of the proceedings he did not put his presence nor any Counsel/Authorized Representative appeared on his behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

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

3. It is argued by learned counsel for the respondents that the onus of proving the averments and allegations by way of filing of claim petition as well as by leading oral or documentary evidence in the court is on the claimant. The learned counsel has further submitted that considering the conduct of the petitioner and the fact that he is not able to substantiate the allegations by way of filing of claim petition and evidence the reference cannot be decided in favour of the claimant.

4. The perusal of the case file shows that the petitioner has received the summons of the court as ample opportunities has been granted to the petitioner to appear before this court to file statement of claim and produce evidence oral as well as documentary. He not only failed to file claim petition and produce the evidence but despite having knowledge of the proceedings failed to appear before this court hence he was proceeded ex parte. The onus of proving the fact that termination of the services of the petitioner by the respondents *w.e.f.* 01.6.2019 was illegal and unjustified was on the petitioner. In absence of any pleadings and evidence to this fact the reference cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

> "22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

5. Hon'ble Supreme Court in **M/s Haryana Suraj Malting Ltd. *vs.* Phool Chand, AIR 2018 SC 2670** has observed thus under the statutory scheme the Labour Court/Tribunal is empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the Industrial Dispute and for maintaining industrial peace. If a party fails to attend the Court/Tribunal without showing sufficient cause, the Court/Tribunal can proceed ex parte and pass an ex parte award. The award, ex parte or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

6. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to file statement of claim and adduce evidence to substantiate allegations.

7. In view of the above, the reference is not maintainable and is accordingly dismissed. The parties are left to bear their costs.

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

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

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

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

Reference No. : 122/2015

Date of Institution : 13.3.2015

Date of Decision : 30.11.2024

Shri Babu Ram s/o Shri Polo Ram, r/o V.P.O. Baldhar, Tehsil & District Kangra, H.P.
. . *Petitioner*.

Versus

1. The Executive Engineer, HPPWD Electric Division Palampur, District Kangra, H.P. (Principal Employer).

2. Shri Saurabh Kuthiala, r/o V.P.O. Purana Kangra, Tehsil & District Kangra, H.P. (Contractor).

3. The Principal, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. . . *Respondents*.

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

For the Petitioner : Sh. N.L. Kaundal, Ld. AR.

For the Respondent no. 1 & 3 : Sh. Anil Sharma, Ld. Dy. D.A.

For Respondent No. 2 : Sh. Umesh Nath Dhiman, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:—

> "Whether termination of the services of Shri Babu Ram s/o Shri Polo Ram, r/o V.P.O. Baldhar, Tehsil & District Kangra, H.P. *w.e.f.* 18-05-2012 by (i) The Executive Engineer, H.P.P.W.D. Electric Division Palampur, District Kangra, H.P. (Principal Employer) (ii) Shri Saurabh Kuthiala, r/o V.P.O. Purana Kangra, Tehsil & District Kangra, H.P. (Contractor), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After receipt of above mentioned reference a Addendum reference dated 26 May, 2018 has been received from the appropriate authority for adjudication which reads as under:—

> "In continuation to this office notification of even number dated 02-03-2015 in respect of industrial dispute of Shri Babu Ram s/o Shri Polo Ram, r/o V.P.O. Baldhar, Tehsil Nagrota Bhagwan, District Kangra, H.P. v/s (i) The Executive Engineer, H.P.P.W.D. Electric Division Palampur, District Kangra, H.P. (Principal Employer) (ii) Shri Saurabh Kuthiala, r/o V.P.O. Purana Kangra, Tehsil & District Kangra, H.P. (contractor). The following party

is added in the ibid reference, "the Principal, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P."

3. The brief facts as stated in the claim petition are that the petitioner was engaged as daily rated Heating Ventilation Air Conditioned Plant Attendant by the respondent no.1 through the contractor i.e. respondent no.2 to work at Dr. Rajender Prasad Government Medical College Tanda, District Kangra, H.P. on 28.5.2007. It is further submitted that respondent no. 3 *i.e.* Principal Dr. Rajender Prasad Government Medical College Tanda, Kangra HP provides funds to respondent no.1 for the aforesaid work assigned to the petitioner which was paid to the petitioner through respondent no.2. It is alleged that respondent no.2 does not possess any licence under the Contract Labour (Regulation and Abolition) Act. It is further alleged that no seniority list as per letter has been prepared by respondent no.2 and junior of the petitioner in same category still working with the respondent in Electrical Division Palampur and also in the said college. Thus respondent has violated the basic principle of 'first come last go' thus retrenchment of petitioner is allegedly against the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The petitioner has also submitted that at the time of his initial engagement till 17.5.2012 he worked continuously and completed 240 days in every calendar year. The respondents have not served him one month's prior notice and did not pay one month pay in lieu of Section 25-F of the Act. The petitioner was not gainfully employed after his illegal retrenchment and he has no source of income to provide square meals for himself as well as his family members. The petitioner has prayed that the petition may be allowed and the illegal termination/retrenchment may be set aside and petitioner may be held entitled for other consequential benefits of compensation etc. and his services may be regularized as per provisions of the law.

4. Respondent no.1 has raised preliminary objections qua maintainability, lack of jurisdiction, suppression of material facts, claim being barred by limitation and lack of locus standi on the part of the petitioner. On merits it is denied that the petitioner was engaged or appointed as a daily rated Heating Ventilation Air-Conditioned Plant Attendant to work at Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. on 28.5.2007. According to respondent no.1 they use to issue tender and call bids for repair/maintenance of various Government non residential buildings of Dr. Rajender Prasad Government Medical College, Tanda, District Kangra. The tenders were issued for 2½ months and after 2½ again fresh tenders and bid was invited. The work was awarded to contractor who has lowest bid. In the year 2011 work was allotted for one year. The contractor arranged labourer to execute the work and the respondent no.1 made payment to the contractor and labour remained under the control of contractor. Thus according to respondent no.1 there is no question of termination of the services of petitioner by respondent no.1. Other averments made in the petition have also been denied and it is prayed that since the petitioner never remained under the employment of respondent no.1 the claim deserves to be dismissed.

5. In reply on behalf of the respondent no. 2 preliminary objections qua maintainability, cause of action, suppression of material facts, claim being barred by limitation and lack of jurisdiction have been raised. On merits, it is asserted that petitioner is working under the control and supervision of respondent no. 2 and the respondents no.1 and 3 are not the employer of the petitioner. Other averments made in the petition have been denied. It is asserted that petitioner gave affidavit in writing about full and final payment of work done by the petitioner on 7.10.2010 and the respondent no. 2 in the month of November, 2011 paid all the dues to the petitioner as per agreement dated 23.11.2011. Respondent no. 2 is small authorized contractor and due to low scale work distribution the respondent no.2 has engaged 2-3 persons and after the completion of the work engaged persons have left respondent no.2 due to unavailability of work.

6. In separate reply of respondent no.3 preliminary objections qua maintainability, lack of jurisdiction, suppression of material facts, claim being barred by limitation and lack of locus

standi have been raised. Other averments made in the petition were denied para-wise and it is prayed that petition deserves to be dismissed.

7. In separate rejoinders to the replies filed on behalf of respondents 1 and 3 preliminary objections have been denied and facts stated in the claim petition have been reiterated and reaffirmed.

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

1. Whether the termination of services of the petitioner by the respondents *w.e.f.* 18-05-2012 is/was illegal and unjustified, as alleged? . . *OPP*.

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

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

4. Whether this Court has no jurisdiction to file the present case, as alleged? . . *OPR*.

5. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . *OPR*.

6. Whether the claim petition is barred by limitation, as alleged? . . *OPR*.

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

Relief

9. Petitioner Babu Ram has produced his affidavit Ext. PW1/A wherein he reiterated the facts mentioned in the claim petition. He also proved the copies of demand notices Ext. PW1/B and Ext. PW1/C.

10. Respondent has examined Shri Karam Chand, Executive Engineer, HPPWD Electrical Division Palampur as RW1 who has produced his affidavit and reiterated the facts stated in the reply on behalf of respondents no.1 and 3. He also produced on record copy of award letter Ext. R-1 to Ext. R-8, notice inviting tenders Ext. R-9 and Ext. R-10, award dated 26.4.2011 Ext. R-11, compromise Ext. R-12 and seniority list Ext. R-13. Respondent no.2 Shri Saurabh Kuthiala has produced his affidavit wherein reiterated the facts as mentioned in his reply denying the case of the petitioner.

11. I have heard the learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondents no.1 and 3 and learned counsel for respondent no.2 at length and records perused.

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

Issue No. 1 : No

Issue No. 2 : Decided accordingly

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : Yes

Issue No.6 : No

Issue No.7 : Yes

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

REASONS FOR FINDINGS

Issue No.1

13. The essential pleadings on behalf of the petitioner states that he was engaged as daily rated Heating Ventilation Air Conditioned Plant Attendant by the respondent no.1 through contractor respondent no.2. He also alleges that respondent no.3 is the principle employer as they provide funds to respondent no.2 for the aforesaid work.

14. The respondents no.1 and 3 have denied that they engaged the petitioner or appointed him. It is asserted that respondent no.1 used to issue tender for 2½ months for repair and maintenance of electrical installation at Dr. Rajender Prasad Government Medical College,Tanda. The contractor had to arrange its own labour who worked under the control of the contractor. During December, 2007 to 2012 the work was awarded to different contractors. Respondent no. 2 has also asserted that the respondents no. 1 and 3 are not the employers of the petitioner. According to respondent no. 2 the petitioner was employed by the respondent no. 2 and paid all the dues on 23.11.2011 *vide* separate compromise deed. Hon'ble Supreme Court in **Balwant Rai Saluja and Anr. *Vs.* AIR India Limited and Ors. [2014 (9) SCC 407]** has observed relationship between the employer and the employee as under:—

> "59. In Ram Singh v. Union Territory, Chandigarh, (2004) 1 SCC 126, as regards the concept of control in an employer-employee relationship, observed as follows:
>
> "15. In determining the relationship of employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the "mutual obligations" between them. (See Industrial Law, 3rd Edn., by I.T. Smith and J.C. Wood, at pp. 8 to 10.)"

15. The petitioner has alleged that he was engaged by respondent no.1 through the respondent no.2 and respondent no. 3 is the principal employer. The petitioner is unable to produce

any letter of appointment or agreement of employment executed by respondents no.1 and 3. The identity card Mark-P1 has been produced on record in order to show that the petitioner was employed by respondent no.1. It is clear from the perusal of this document Mark P1 which is photocopy of the original that the petitioner was shown to be attached with Electrical Sub Division Tanda and this document does not bear the particular of issuing authority or authority of its validation. It is denied by the petitioner that Identity Card was issued merely for the purpose of providing ingress and egress to the hospital. However learned Dy. D.A. for the respondents no.1 and 3 vehemently argued that only purpose of document Mark-P1 is to allow the petitioner to move freely for the purpose of his work inside the medical college.

16. The petitioner has alleged that he had worked with respondents from the year 2007 till the year 2012, the respondent however produced on record an affidavit Ext. D1. The petitioner has identified his signatures on this affidavit *vide* which he has admitted receiving full and final of his work from respondent no. 2 as on 7.10.2010. Petitioner has admitted that he does not have any written evidence/proof of direct payment made by respondents no.1 and 3. This fact becomes more important when petitioner has himself asserted that once the petitioner was made payment by Tanda Medical College. According to petitioner his work remained throughout the year and he is unable to prove by oral or documentary evidence that he remained under the supervision and control of respondent no.1 only. In his cross-examination the petitioner has denied that he did not have only concern with the contractor. He asserts that he was appointed by the department but he worked under the supervision of the contractor. He denied that he has no dues from the contractor and he does not have to recover any money from the contractor. It is interesting to peruse the stances held by the petitioner. On one hand he alleges that he was appointed by respondent no.1 but to the contrary he has not been able to provide any record of appointment, record of payment made to him, record pertaining to direct control and supervision of respondent no.1. On the other hand he himself claims that he has recoverable dues from respondent no. 2 *i.e.* contractor and also admits that he has worked under the supervision of the contractor. Respondents have produced on record copies of letters Ext. R-1 to Ext. R-8, notices inviting tender Ext. R-9 and Ext. R-10 and award letter dated 26.11.2011 Ext. R-11. The document Ext. R-11 shows that the work of maintenance and running operation of central HVAC system installed in Dr. RPGMC Tanda was given to private contractor for a fixed period and in the year 2011 the same was awarded to M/s Continental Engineers Chanana Cottage. The petitioner has alleged that he was disengaged by the respondents in the year 2012 but there is no evidence that respondent no.2 was contractor during said period and that the petitioner was appointed by respondent no.1 through respondent no.2 in the year 2012. The compromise deed Ext. R-12 clarifies that all the dues to the petitioner have been cleared by respondent no.2 in November, 2011 only. There is no evidence of employment of petitioner with respondents in the year 2012. Thus question of illegal retrenchment as alleged on 18.5.2012 does not arise. Issue no.1 is accordingly decided in the favour of respondents.

Issue No. 2

17. The findings of issue no.2 was consequent to the findings recorded with respect to issue no.1 above since the claim of the petitioner is not maintainable the petitioner is not entitled qua any relief prayed by him and issue no.2 is accordingly decided.

Issues No. 3 and 5

18. It has been contended on behalf of respondents that all the dues of the petitioner for the period for which he has worked under the contractor *i.e.* respondent no. 2 have already been cleared. It is also the contention of the respondents collectively that the petitioner was never an employee of respondents no.1 and 3 but employed through by contractor *i.e.* respondent no. 2. This facts have become clear from evidence on the case file. On the contrary the petitioner has failed to

prove that he was under the direct appointment of the respondents no.1 and 3. He has failed to prove that he was disengaged from his services in the year 2012 hence the claim petition is not maintainable and the petitioner has no locus standi and cause of action to file the present claim. These issues are decided in the favour of the respondents.

Issues No. 4 and 6

19. An industrial dispute has been raised by the petitioner before Conciliation Officer which in accordance with the due process was referred for adjudication to this court. This court has the jurisdiction to decide the matter which has been referred to it by the appropriate authority. The claim has also been filed within reasonable period of alleged dispute hence the same is not barred by limitation. Issues no. 4 and 6 are decided in the favour of the petitioner.

Issue No.7

20. The petitioner has approached the court alleging that he has remained employee with the respondents since the year 2012. He has not brought to the notice of this court that he has already settled account with the respondent no. 2 in the year 2011 vide separate compromise deed Ext. R-12 and he also suppressed that he executed the affidavit Ext. D1. In these circumstances the petitioner is not entitled for the relief as he approached the court with clean hands and suppressing the material facts, hence issue no. 7 is decided in the favour of the respondents.

Relief

21. In view of my discussion on the issues no.1, 2, 3, 5 and 7 the claim petition does not deserve any merit accordingly the same is dismissed. Parties are left to bear their costs.

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

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

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

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171002, the 7th February, 2025

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

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/ Order
1.	Ref. 150/2019	Sh. Jeewan Singh	M.D. HRTC Shimla & Anr.	15-01-2024
2.	Ref. 260/2020	Sh. Sunil Kumar	M/s Transasia Bio Medical Ltd.	15-01-2024
3.	Ref. 261/2020	Sh. Kartar Chand	M/s Transasia Bio Medical Ltd.	15.01.2024
4.	Ref. 264/2020	Sh. Diwan Chand	M/s Transasia Bio Medical Ltd.	15-01-2024
5.	Ref. 188/2018	Sh. Sunil Kumar	Registrar, Bahara University & Anr.	16-01-2024
6.	Ref. 289/2020	Ms. Sangeeta Singh	A&A Modular System	16-01-2024
7.	Ref. 290/2020	Ms. Manju Devi	A&A Modular System	17-01-2024
8.	Ref. 23/2020	Ms. Navita Devi	Registrar, MMU, Solan	19-01-2024
9.	Ref. 176/2018	Sh. Dinesh Kumar	Registrar, MMU, Solan	19-01-2024
10.	Ref. 175/2018	Sh. Padam Kumar	Registrar, MMU, Solan	20-01-2024
11.	Ref. 62/2015	Sh. Rupinder Singh	The XEN, IPH, Shimla	23-01-2024
12.	Ref. 159/2020	Sh. Brij Lal	Director Atal Bihari Vajpayee Institute & Anr.	23-01-2024
13.	Ref. 194/2018	Sh. Kaku Chaudhary	Mahodar Beverages Baddi	24-01-2024
14.	Ref. 268/2020	Sh. Pradeep Kumar	M/s Bajaj Consumers Care (P) Ltd.	24-01-2024

By order,

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

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

Reference Number : 150 of 2019

Instituted on : 11-12-2019

Decided on : 15-01-2024

Jeewan Singh s/o Shri Munshi Ram, r/o Village Nog, P.O. Binola, Tehsil Sadar, District Bilaspur, H.P. . .*Petitioner.*

VERSUS

1. The Managing Director, Himachal Pradesh Transport Corporation, Shimla -3, H.P.
2. The Regional Manager, Himachal Pradesh Transport Corporation, Nalagarh, District Solan, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate

For the Respondent : Ms. Reeta Thakur, Advocate

AWARD

The following reference petition has been received from the Appropriate Government *vide* notification dated 29.11.2019, under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"), for legal adjudication:

"**Whether termination of the services of Shri Jeewan Singh s/o Shri Munshi Ram, r/o Village Nog, P.O. Binola, Tehsil Sadar, District Bilaspur, H.P. by the Regional Manager, Himachal Pradesh Transport Corporation, Nalagarh, District Solan, H.P. with immediate effect *vide* order dated 14.06.2017, after conducting domestic enquiry, is legal and justified? If not, what relief including re-instatement, amount of back-wages, seniority, past service benefits and compensation, the above aggrieved worker is entitled to from the above stated employer?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a driver by the respondent on 02.12.2016. His work and conduct was found to be satisfactory and had been performing his duties with utmost devotion, sincerity and loyalty. However, his services were terminated on 14.06.2017. A memorandum/show cause notice was issued to him by the respondents, which was responded to by him. No enquiry was conducted and the petitioner was condemned unheard. His termination without there being any chargesheet and conducting of enquiry is in violation of Article 14 of the Constitution of India and Labour Laws. An appeal was preferred by him against the termination order before the Divisional Manager, Hamirpur, but it was dismissed without assigning any reasons. Thereafter, he had filed an appeal before the Managing Director, HRTC, which was also dismissed. Before terminating the services of the petitioner, the respondents have not followed the principles of natural justice, as no personal hearing was given to him. He is unemployed. His termination on the basis of show cause notice/memorandum is bad in law, as the alleged misconduct is not a major misconduct and the punishment of dismissal from service is disproportionate to misconduct. He, thus, has prayed that his reference be answered in his favour and he be reinstated with all consequential benefits, seniority and back-wages.

3. On notice, the respondents appeared. Both the respondents filed a joint reply.

4. The petition was contested by the respondents taking preliminary objection regarding lack of maintainability. On merits, it is admitted that the petitioner was appointed as driver on contract basis vide order dated 02.12.2016. It is denied that his work and conduct was satisfactory. It is alleged that the reply filed by the petitioner to the show cause notice dated 23.03.2017 was

found to be unsatisfactory. Thereafter, another show cause notice dated 22.04.2017 for suspension of route, was also served upon him, which was also responded to. Another show cause notice dated 2.6.2017 for break down of bus was also served upon the petitioner, but he had not submitted any reply. So, on account of dereliction in his duties, the contract agreement executed with him was cancelled vide office order dated 14.06.2017. Before terminating his services, the petitioner had been served three memorandums. The appeals of the petitioner had been dismissed vide well reasoned and speaking orders. It is denied that the respondents have violated the principles of natural justice. Hence, it is prayed that the petition be dismissed.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 01.04.2022:

1. Whether the termination of the petitioner by the respondent vide order dated 14.06.2017 after conducting domestic enquiry is illegal or 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. Arguments of the learned Counsel for the parties heard and records gone through.

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

Issue No. 1	:	Yes. Entitled to re-instatement with seniority and continuity along-with full back-wages.
Issue No.2	:	No
Relief	:	Reference is answered in affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

10. In order to prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A in the shape of examination-in-chief, wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence office order as Mark PA, memorandums dated 23.03.2017, 14.06.2017 and 02.06.2017 as Mark PB, Mark PC and Mark PD respectively. In cross-examination, he feigned ignorance that there was a stipulation in the agreement that on account of insubordination, misconduct, moral turpitude or any breach of non-performance of an agreement, his services could be terminated without notice. He

denied that he had not performed his duties as per the terms and conditions of the agreement. He further denied that on 16.03.2017 at about 8.00 PM, he had torn the duty register at the workshop, while being drunk. He admitted that a memorandum had been issued to which he had responded. However, he denied that his reply was found to be not satisfactory. He admitted that on 09.04.2017 he had arrived late for duty by ten minutes. However, he denied that route had to be suspended, as there was no driver available. He was not aware that the respondents had suffered a loss of ` 2,011/. He admitted that a memorandum was issued to him in this regard. He denied that on 30.05.2017, when the bus had broken down at Siswan, he was not found present there. He admitted that another memo was issued to him, to which he had not filed any reply. He admitted that his appeals before the Divisional Manager and Managing Director, had been considered and rejected. He specifically denied that his services had been terminated on account of misconduct, dereliction of duty and non performing of the job honestly.

11. In rebuttal, the respondents examined one Shri Dalveer Chand, Senior Assistant, HRTC Nalagarh as RW-1, who deposed that the conduct of the driver was not upto the mark. He had torn the register and had remained absent from duty. The reply filed to the show cause notice (Ex. R-2) was not found to be satisfactory. For absence from duty, show cause notice (Ex. R-3) had been issued to the petitioner. Though, he responded to it, but his reply was again not satisfactory. One more show cause notice (Ex. R-4) had been issued, which was not replied to by the petitioner. As his conduct was not found to be satisfactory, the contract was cancelled vide (Ex. R-5). The appeals preferred by the petitioner were dismissed vide (Ex. R-6) and (Ex. R-7).

12. In cross-examination, he admitted that no enquiry was conducted by the department. He also admitted that the petitioner had been terminated on 14.06.2017. He specifically denied that satisfactory replies had been filed by the petitioner to all the show cause notices, but just to harass him his services have been terminated by the department.

13. Shri Prateek Kumar, learned Counsel for the petitioner has contended with vehemence that the petitioner was engaged as a driver by the respondents and initially he was appointed for a period of one year on contract basis, as per the existing policy of the State Government. The respondent had issued three show cause notices to him, but the respondent department had terminated his services without affording any reasonable opportunity of being heard, as neither any enquiry was conducted, nor any chargesheet was issued to him. He further contended that while issuing the memorandum dated 02.06.2017, Ex. R-4, fifteen days' time was granted to the petitioner to file the representation/reply, but the respondents with a view to harass the petitioner had terminated his services on 14.06.2017, before the expiry of period of fifteen days, which is totally illegal and contrary to the provisions of the Act.

14. On the other hand, Ms. Reeta Thakur, learned Counsel for the respondents has strenuously argued that the petitioner was engaged on contract basis by the respondents and during employment as his work and conduct was not found to be satisfactory, three show cause notices were issued to him. The petitioner had responded to two show cause notices, but his replies were not found to be satisfactory. To the last show cause notice, no reply was filed by him, hence his services were terminated after affording a reasonable opportunity of being heard.

15. I have given my best, anxious and considerable thoughts to the submissions of the respective counsel Shri Prateek Kumar, Advocate for the petitioner as well Ms. Reeta Thakur, learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

16. Admittedly, the services of the petitioner had been engaged as Driver on contract basis for a period of one year *w.e.f.* 02.12.2016 and he had worked as such till 14.06.2017, on which date

his services were terminated vide office order dated 14.06.2017, copy of which is placed on record as Ex. R-5. There is no denial of the fact that three show cause notices had been issued to the petitioner by the respondents. As per the first show cause notice Ex. R-2, the conduct of the petitioner is stated to be not satisfactory, as he is claimed to have torn the duty register in the workshop on 16.3.2017. According to the second show cause notice Ex. R-3, the petitioner is claimed to have not reported on duty at the scheduled time and on account of non-availability of another driver, the route of the bus had to be cancelled, thereby causing monetary loss to Himachal Road Transport Corporation. According to the last show cause notice Ex. R-4, the petitioner was not found present at the place of breakdown of the bus. Indisputably, the first two show cause notices were responded to by the petitioner by filing replies. As regards the third show cause notice, no reply was filed by him and admittedly his services stood terminated on 14.6.2017. Be it recorded here that as per show cause notice (Ex. R-4), which is dated 2.6.2017, fifteen day's time had been granted to the petitioner to respond to the notice. Manifest that prior to the completion of a period of fifteen days, as provided in the show cause notice, the services of the petitioner stood terminated.

17. Since, the petitioner as per his pleadings and evidence has specifically claimed that there was no misconduct on his part nor there was any dereliction in duties by him, it was incumbent upon the respondents to have conducted an enquiry and to have laid a chargesheet against the petitioner regarding the acts of misconduct and dereliction of duties on his part. Admittedly, so was not done by the respondents, as is evident from the testimony of the witness examined by the respondents as RW-1 Shri Dalveer Chand, who clearly admitted while under cross examination that no enquiry had been conducted with respect to the show cause notices issued to the petitioner. Therefore, the present is a case where the termination of the petitioner is based on no enquiry and no charge. Therefore, it becomes a case of illegal retrenchment. It has been laid down in **Sachiv, Krishi Upaj Mandi Samiti, Sanawad Vs. Mahendra Kumar s/o Mangi Lal Tanwaro, 2004 LLR 405** that where the termination of an employee is based on no inquiry, no charge and not by way of punishment, it becomes a case of illegal retrenchment. Faced with the situation, it was contended by the learned counsel for the respondents that the appeals preferred by the petitioner against his order of termination have been dismissed by the Competent Authorities. To my mind, this fact would not come to the rescue of the respondents in any way in the absence of any inquiry having been conducted and chargesheet laid against the petitioner.

18. Since, it stands proved on record that without conducting any inquiry and without putting a charge to the petitioner, he was held to be guilty of misconduct and of dereliction in duties, his termination is in contravention of the provisions of the Act and for this reason, the same is held to be illegal and improper. Accordingly, the order of termination of services of the petitioner vide office order dated 14.06.2017 (Ex. R-7) is hereby set aside and quashed. Therefore, the petitioner is entitled to reinstatement in service with seniority and continuity.

19. The petitioner as per his pleadings has claimed full back-wages. As PW-1, the petitioner claimed that from the date of his illegal termination, he has remained unemployed. His such testimony has remained un-challenged in the cross-examination. He was neither cross-examined nor any suggestion was put to him that he was gainfully employed and was getting wages equal to the wages he was drawing from the respondent.

20. In **Deepali Gundu Surwase *Vs.* Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324**, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

21. To my mind, now if the respondents wanted to avoid the payment of full back-wages, then they had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of services. Since, in the case in hand, the petitioner has shown that he was not employed, the onus lay on the respondents to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondents in the present case. Neither, it has been pleaded nor any grain of evidence has been led on record by the respondents to show that the petitioner was gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages. It has not only been averred in the pleadings, but also specifically stated by the petitioner in his evidence that he was drawing Rs. 7,200/- per month, as wages. The respondents have clearly admitted in their reply that the petitioner was drawing a salary of Rs. 7,200/- per month. So, the petitioner is entitled to full back wages @ Rs. 7,200/- per month from the date of his illegal termination *i.e.* 14.06.2017 till his reinstatement. Accordingly, this issue is decided in the affirmative and in favour of the petitioner.

ISSUE NO. 2

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

RELIEF

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

Announced in the open Court today this 15th Day of January, 2024.

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

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

Reference Number	:	260 of 2020
Instituted on	:	07-10-2020
Decided on	:	15-01-2024

Sunil Kumar s/o Shri Kartar Singh, r/o Village Chulhan, P.O. Harnera, Tehsil Shahpur, District Kangra, H.P. . .*Petitioner.*

VERSUS

The Factory Manager M/s Transasia Bio Medical Ltd., Village Malpur, P.O Bhud, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri Prajwal, Advocate
For the Respondent	:	Shri Rahul Lakhanpal, Advocate

AWARD

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

"**Whether termination of the services of Shri Sunil Kumar s/o Shri Kartar Singh, r/o Village Chulhan, P.O. Harnera, Tehsil Shahpur, District Kangra, H.P *vide* letter dated 29.05.2020 by the Factory Manager M/s Transasia Bio Medical Ltd., Village Malpur, P.O Bhud, Tehsil Baddi, District Solan, H.P without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was initially appointed on 2.12.2010 as Trainee Technician SS-1 by the respondent vide an appointment letter. His services stood confirmed on 1.1.2013. He had been discharging his duties with utmost sincerity and as per the directions issued by superiors from time to time. On 23rd March, 2020 the Government of India had declared a complete lock-down due to pandemic for two weeks, which was subsequently enhanced. The petitioner had discharged his duties with the respondent till 23rd March, 2020. During the month of March and April, 2020, he had remained at Baddi due to complete lock-down. On 28th April, he had gone to his native place on foot, as no public transport was available, after informing the respondent. On 29th May, 2020, he had received a letter from the respondent stating that his name had been removed from the company's muster roll, on being found absent from duty w.e.f. 24th March, 2020. This notice was in violation of the instructions/ advisories issued by the Central as well as State Governments. He was not given an opportunity of being heard, before removal from service, thus, being violative of the principles of natural justice. However, on 5th June, 2020, he had gone back to his place of work, when he was told by respondent no.1 that on account of Covid-19, the factory would remain closed for the next few days and that he would be telephonically informed. When after 15 days he along-with some other employees of the company had gone to the factory, was not allowed to enter on the pretext of Corona and had been asked to come after a month. He had requested the respondent many a times regarding his willingness to join his duty, but without success. The action of the respondent in terminating his services is against the provisions of Labour Law and the Act. No chargesheet was served upon him nor any enquiry was conducted. It is, therefore, prayed that the termination order passed against the petitioner be quashed and set aside and the respondent be directed to reinstate him with all consequential benefits. The respondent be also directed to release his full wages till date.

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

4. The petition was contested by the respondent by alleging that as the company is engaged in the business of manufacturing reagents and medical instruments, it falls under the category of "essential services". The Government had exempted the Hospitals and all Medical Establishments during the pandemic and the employee of the industry falling under essential services was allowed to attend the work on presenting his card before the Authorities. Since, the petitioner was part of the medical industry, he was allowed to work during the lockdown. However, he despite being aware of this fact he had willingly and voluntarily neglected his duties and had gone back home without informing the respondent. The work in the establishment of the respondent had continued and permission had been obtained from the Authorities for operating the transport facilities to the employees. The petitioner without information had left the job and had remained absent from the duties. It is admitted that the petitioner had been served a notice dated 29.5.2020 for voluntarily abandonment of his duties since 24.3.2020. Ample time and opportunity had been given to the petitioner till 28.5.2020 to report back on duty, but he choose to remain absent, thereby violating the concerned employment law and the company's policy. There has been no violation of any laws or natural justice by the respondent. The action of the respondent to terminate the services of the petitioner is totally within the preview of law and there has been no violation of the provisions of the Act. A letter dated 16.7.2020 has already been addressed to the petitioner regarding full & final settlement. Hence, the respondent has prayed that the petition being baseless deserves dismissal with costs.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 07.12.2022 :

1. Whether the termination of the services of petitioner *w.e.f.* 29.05.2020 by the respondent 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 filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief.

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

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

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

Issue No.1 : Negative

Issue No. 2 : Negative

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

REASONS FOR FINDINGS

ISSUE NO.1 .

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent on 29.05.2020 by violating the provisions of the Act. It was asserted that the petitioner had been engaged as a Logistic Assistant on 01.02.2013 by the respondent and had continuously worked till 23.03.2020, when thereafter a complete lockdown had been declared by the Government due to pandemic of Covid 19. It was his claim that during the Months of March and April, 2020 he had remained at Baddi and had left for his native place on 28.4.2020 after prior intimation to the respondent. He had remained at his native place till the month of June, 2020, where he had received a letter dated 29.5.2020 from the respondent to the effect that his name had been removed from the company's muster roll, as he had been found absent from duty w.e.f. March 24, 2020. It was also asserted that no opportunity was given to the petitioner to defend himself. These averments were required to be established on record by the petitioner by way of ocular and / or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as Trainee Technician.

12. It was contended by the learned vice Counsel appearing for respondent that the petitioner had not worked for 240 days during the preceding twelve months and, therefore, he cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. 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 the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 29.05.2020. No details of work of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The petitioner in the statement of claim has nowhere maintained that at the time his services were terminated, persons junior to him were retained in service by the respondent. Even otherwise, there is no seniority list placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/company. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

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

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

ISSUE NO. 3

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

RELIEF

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

Announced in the open Court today this 15th day of January, 2024.

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

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

Reference Number : 261 of 2020

Instituted on : 08-10-2020

Decided on : 15-01-2024

Kartar Chand s/o Shri Jagdish Chand, r/o Village & P.O. Karohta, Tehsil Bhoranj, District Hamirpur H.P. . .*Petitioner.*

VERSUS

The Factory Manager M/s Transasia Bio Medical Ltd., Village Malpur, P.O. Bhud, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

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

For the Petitioner : Shri Prajwal, Advocate

For the Respondent : Shri Rahul Lakhanpal, Advocate

AWARD

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

"**Whether termination of the services of Shri Diwan Chand s/o Shri Kartar Chand s/o Shri Jagdish Chand, r/o Village & P.O. Karohta, Tehsil Bhoranj, District Hamirpur H.P *vide* letter dated 29.05.2020 by the Factory Manager M/s Transasia Bio Medical Ltd., Village Malpur, P.O Bhud, Tehsil Baddi, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was initially appointed on 01.02.2013 as Logistic Assistant by the respondent vide an appointment letter. He had been discharging his duties with utmost sincerity and as per the directions issued by superiors from time to time. On 23rd March, 2020 the Government of India had declared a complete lock-down due to pandemic for two weeks, which was subsequently enhanced. The petitioner had discharged his duties with the respondent till 23rd March, 2020. During the months of March and April, 2020, he had remained at Baddi due to complete lock-down. On 28th April, he had gone to his native place on foot, as no public transport was available, after informing the respondent. On 29th May, 2020, he had received a letter from the respondent stating that his name had been removed from the company's muster roll, on being found absent from duty *w.e.f.* 24th March, 2020. This notice was in violation of the instructions/ advisories issued by the Central as well as State Governments. He was not given an opportunity of being heard, before removal from service, thus, being voilative of the principles of natural justice. However, in the first week of June, 2020, he had gone back to his place of work, when he was told by respondent no.1 that on account of Covid-19, the factory would remain closed for the next few days and that he would be telephonically informed. When after 15 days he along-with some other employees of the company had gone to the factory, was not allowed to enter on the pretext of Corona and had been asked to come after a month. He had requested the respondent many a times regarding his willingness to join his duty, but without success. The action of the respondent in terminating his services is against the provisions of Labour Law and the Act. No chargesheet was served upon him nor any enquiry was conducted. It is, therefore, prayed that the termination order passed against the petitioner be quashed and set aside and the respondent be directed to reinstate him with all consequential benefits. The respondent be also directed to release his full wages till date.

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

4. The petition was contested by the respondent by alleging that as the company is engaged in the business of manufacturing reagents and medical instruments, it falls under the category of "essential services". The Government had exempted the Hospitals and all Medical Establishments during the pandemic and the employee of the industry falling under essential services was allowed to attend the work on presenting his card before the Authorities. Since, the petitioner was part of the medical industry, he was allowed to work during the lockdown. However,

he despite being aware of this fact had willingly and voluntarily neglected his duties and had gone back home without informing the respondent. The work in the establishment of the respondent had continued and permission had been obtained from the Authorities for operating the transport facilities to the employees. The petitioner without information had left the job and had remained absent from the duties. It is admitted that the petitioner had been served a notice dated 29.5.2020 for voluntary abandonment of his duties since 24.3.2020. Ample time and opportunity had been given to the petitioner till 28.5.2020 to report back on duty, but he chose to remain absent, thereby violating the concerned employment law and the company's policy. There has been no violation of any laws or natural justice by the respondent. The action of the respondent to terminate the services of the petitioner is totally within the preview of law and there has been no violation of the provisions of the Act. A letter dated 16.7.2020 has already been addressed to the petitioner regarding full & final settlement. Hence, the respondent has prayed that the petition being baseless, deserves dismissal with costs.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 07.12.2022 :

1. Whether the termination of the services of petitioner *w.e.f.* 29.05.2020 by the respondent 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 filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief.

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

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

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

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

REASONS FOR FINDINGS

ISSUE NO.1

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent on 29.05.2020 by violating the provisions of the Act. It was asserted that the petitioner had been engaged as Logistic Assistant on 01.02.2013 by the respondent and had continuously worked till 23.03.2020 when thereafter a complete lockdown had been declared by the Government due to pandemic of Covid 19. It was his claim that during the Months of March and April, 2020, he had remained at Baddi and had left for his native place on 28.4.2020 after prior intimation to the respondent. He had remained at his native place till the month of June, 2020, where he had received a letter dated 29.5.2020 from the respondent to the effect that his name had been removed from the company's muster roll, as he had been found absent from duty *w.e.f.* March 24, 2020. It was also asserted that no opportunity was given to the petitioner to defend himself. These averments were required to be established on record by the petitioner by way of ocular and / or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as Logistic Assistant.

12. It was contended by the learned vice Counsel appearing for respondent that the petitioner had not worked for 240 days during the preceding twelve months and, therefore, he cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. 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 the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 29.05.2020. No details of work of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The petitioner in the statement of claim has nowhere maintained that at the time his services were terminated, persons junior to him were retained in service by the respondent. Even otherwise, there is no seniority list placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/company. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

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

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

ISSUE NO. 3

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

RELIEF

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

Announced in the open Court today this 15th day of January, 2024.

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

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

Reference Number : 264 of 2020

Instituted on : 08-10-2020

Decided on : 15-01-2024

Diwan Chand s/o Shri Karam Singh, r/o Village Choni Gharwasra, P.O. Balhara, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

VERSUS

The Factory Manager M/s Transasia Bio Medical Ltd., Village Malpur, P.O. Bhud, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Prajwal, Advocate

For the Respondent : Shri Rahul Lakhanpal, Advocate

AWARD

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

"**Whether termination of the services of Shri Diwan Chand s/o Shri Karam Singh, r/o Village Choni Gharwasra, P.O. Balhara, Tehsil Sarkaghat, District Mandi, H.P vide letter dated 29.05.2020 by the Factory Manager M/s Transasia Bio Medical Ltd., Village Malpur, P.O Bhud, Tehsil Baddi, District Solan, H.P without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was initially appointed on 11.08.2014 as Technician by the respondent *vide* an appointment letter. He had been discharging his duties with utmost sincerity and as per the directions issued by superiors from time to time. On 23rd March, 2020 the Government of India had declared a complete lock-down due to pandemic for two weeks, which was subsequently enhanced. The petitioner had discharged his duties with the respondent till 23rd March, 2020. During the months of March and April, 2020, he had remained at Baddi due to complete lock-down. On 28th April, he had gone to his native place on foot, as no public transport was available, after informing the respondent. On 29th May, 2020, he had received a letter from the respondent stating that his name had been removed from the company's muster roll, on being found absent from duty *w.e.f.* 24th March, 2020. This notice was in violation of the instructions/ advisories issued by the Central as well as State Governments. He was not given an opportunity of being heard, before removal from service, thus, being voilative of the principles of natural justice. However, in the first week of June, 2020, he had gone back to his place of work, when he was told by respondent no.1 that on account of Covid-19, the factory would remain closed for the next few days and that he would be telephonically informed. When after 15 days he along-with some other employees of the company had gone to the factory, was not allowed to enter on the pretext of Corona and had been asked to come after a month. He had requested the respondent many a times regarding his willingness to join his duty, but without success. The action of the respondent in terminating his services is against the provisions of Labour Law and the Act. No chargesheet was served upon him nor any enquiry was conducted. It is, therefore, prayed that the termination order passed against the petitioner be quashed and set aside and the respondent be directed to reinstate him with all consequential benefits. The respondent be also directed to release his full wages till date.

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

4. The petition was contested by the respondent by alleging that as the company is engaged in the business of manufacturing reagents and medical instruments, it falls under the category of "essential services". The Government had exempted the Hospitals and all Medical Establishments during the pandemic and the employee of the industry falling under essential services was allowed to attend the work on presenting his card before the Authorities. Since, the petitioner was part of the medical industry, he was allowed to work during the lockdown. However, he despite being aware of this fact had willingly and voluntarily neglected his duties and had gone back home without informing the respondent. The work in the establishment of the respondent had continued and permission had been obtained from the Authorities for operating the transportation facilities to the employees. The petitioner without information had left the job and had remained absent from the duties. It is admitted that the petitioner had been served a notice dated 29.5.2020

for voluntary abandonment of his duties since 25.3.2020. Ample time and opportunity had been given to the petitioner till 28.5.2020 to report back on duty, but he chose to remain absent, thereby violating the concerned employment law and the company's policy. There has been no violation of any laws or natural justice by the respondent. The action of the respondent to terminate the services of the petitioner is totally within the preview of law and there has been no violation of the provisions of the Act. A letter dated 16.7.2020 has already been addressed to the petitioner regarding full & final settlement. Hence, the respondent has prayed that the petition being baseless, deserves dismissal with costs.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 07.12.2022

1. Whether the termination of the services of petitioner *w.e.f.* 29.05.2020 by the respondent 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 filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief.

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

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

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

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

REASONS FOR FINDINGS

ISSUE NO.1

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent on 29.05.2020 by violating the provisions of the Act. It was asserted that the petitioner had been engaged as a Techincian on 11.08.2014 by the respondent and had continuously worked till 23.03.2020, when thereafter a complete lockdown had been declared by the Government due to pandemic of Covid 19. It was his claim that during the Months of March and April, 2020 he had remained at Baddi and had left for his native place on

28.4.2020 after prior intimation to the respondent. He had remained at his native place till the month of June, 2020, where he had received a letter dated 29.5.2020 from the respondent to the effect that his name had been removed from the company's muster roll, as he had been found absent from duty *w.e.f.* March 24, 2020. It was also asserted that no opportunity was given to the petitioner to defend himself. These averments were required to be established on record by the petitioner by way of ocular and / or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as Technician.

12. It was contended by the learned vice Counsel appearing for respondent that the petitioner had not worked for 240 days during the preceding twelve months and, therefore, he cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. 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 the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 29.05.2020. No details of work of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The petitioner in the statement of claim has nowhere maintained that at the time his services were terminated, persons junior to him were retained in service by the respondent. Even otherwise, there is no seniority list placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/company. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

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

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

ISSUE NO. 3

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

RELIEF

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

Announced in the open Court today this 15th day of January, 2024.

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

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

Reference Number : 188 of 2018

Instituted on : 01-12-2018

Decided on : 16-01-2024

Sunil Kumar s/o Shri Prem Chand, r/o Village Plaha, P.O. Chhosa, Tehsil Kandaghat, District Solan, H.P. ..*Petitioner.*

VERSUS

1. The Registrar, Bahra University, Shimla Hills, Waknaghat, Tehsil Kandaghat, District Solan, H.P.

2. The Director Administration, Bahra University, Shimla Hills, Waknaghat, Tehsil Kandaghat, District Solan, H.P. ..*Respondents.*

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

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

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

AWARD

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

"**Whether termination of the services of Sunil Kumar s/o Shri Prem Chand, r/o Village Plaha, P.O. Chhosa, Tehsil Kandaghat, District Solan, H.P. by the 1) The Registrar, Bahra University, Shimla Hills, Waknaghat, Tehsil Kandaghat, District Solan, HP II) The Director Administration, Bahra University, Shimla Hills, Waknaghat, Tehsil Kandaghat, District Solan, H.P. *w.e.f.* 21.08.2017 without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back-wages, reinstatement, seniority, 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 he was engaged as an Ambulance driver with the respondent university on 01.10.2010 and had worked as such till his illegal termination on 21.08.2017. He had been illegally restrained from attending his duties by the Security Supervisor, who manhandled and abused him without any reason. His last drawn salary was Rs. 8100/- per month with Rs. 500/- per month as allowance. He had been retrenched without any notice, retrenchment compensation and without complying with the mandatory provisions of Section 25-F of the Act. It was not a speaking order and the refusal of the work from 21.08.2017 onwards amounts to unfair labour practice. The work and conduct of the petitioner was quite satisfactory and he had never been served with any chargesheet nor any enquiry was ever held in accordance with the law. No fair and reasonable opportunity had been afforded to him before terminating his services. His juniors were retained and even new hands have been engaged, which is in violation of the provisions of Sections 25-G and 25-H of the Act. He is unemployed. It is, thus, prayed that his termination be declared illegal and unjustified by awarding reinstatement to him with full back-wages, seniority and other consequential service benefits.

3. On notice, the respondents appeared and filed a joint the reply.

4. The petition was contested by the respondents taking preliminary objections regarding lack maintainability, cause of action, concealment of material facts and that the work and conduct of the petitioner had never remained upto the mark, as he had indulged himself in unlawful activities. On merits, it is admitted that the petitioner was engaged as an Ambulance driver on 01.10.2010 and he had worked as such till 21.8.2017. It is also admitted that he was drawing a monthly salary of Rs. 8100/- with Rs. 500/- per month as allowance. It is alleged that the petitioner along-with Pankaj Kumar and 7 to 8 Mess workers had given beatings and thereby caused hurt to Avtar Singh, who was working as Security Officer, during the day time on 24.7.2017. His such conduct was not tolerable and his services were terminated by the respondents after conducting a proper inquiry. It is further alleged that the petitioner had admitted his guilt before the enquiry committee. The order of termination is as per law. No provisions of the Act have ever been violated by the respondents. The petitioner is gainfully employed. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 18.06.2019:

4. Whether the termination of the petitioner w.e.f. 21.08.2017 is voilative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . .*OPP.*

5. Whether the petitioner has not approached this Court with clean hands and suppressed material facts, as alleged? If so, its effects thereto? . .*OPR.*

6. Whether the claim is not maintainable, as alleged? If so, its effects thereto? . .*OPR.*

7. Relief.

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

8. Arguments of the learned Authorized Representative of the petitioner and the learned counsel for the respondents heard and records gone through. I have also gone through the written arguments placed on record by the respondents.

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

Issue No. 1	:	Partly yes. Entitled to reinstatement with seniority and continuity along-with back-wages @ 25%.
Issue No. 2	:	No
Issue No. 3	:	No
Relief	:	Reference is answered in affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1

10. As per the petitioner, he had been engaged as an Ambulance driver by the respondents and had worked continuously w.e.f. 01.10.2010 till 21.08.2017, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be re-instated in service by the respondents on the same post and with all service benefits including full back-wages.

11. Per contra, the respondents admitted that though the petitioner was an employee of the university and had worked as such from 01.10.2010 to 21.08.2017, but it was contended that his work and conduct was not good and he had indulged himself in unlawful activities. It was also claimed that as the petitioner along-with others had given beatings to one Avtar Singh, working as Security Officer, and thereby had caused him injuries, an enquiry was conducted against the petitioner as per law and his services were accordingly terminated by the respondents, when he had confessed his guilt. So, the petitioner is not entitled for reinstatement in service of the university, an educational institution, where violence cannot be tolerated.

12. In support of his case, Shri Sunil Kumar (petitioner) stepped into the witness box as PW-1 and reiterated on oath the contents of the petition/statement of claim in its entirety.

13. In the cross-examination, he denied that he had a fight with Avtar Singh, Security Officer and thereby had created an atmosphere of terror in the university. He also denied that in this behalf a show cause notice was issued to him by the respondents. He further denied that an enquiry had also been conducted against him in the matter, when he had admitted his guilt. It was also specifically denied by him that he had been given an opportunity to defend himself in the enquiry. He further denied that all his dues stand paid to him till 21.08.2017 by the respondents. Although, he denied that he is working with someone else, but he self-stated that he is driving private vehicles. He clearly admitted that the entire family is dependent upon him and that approximately Rs. 15,000/- to Rs. 20,000/- are spent on the up keep of the family.

14. Conversely, the respondents examined Dr. R.C. Sharma as RW-1. In his chief examination, he corroborated on oath the contents of the reply filed by the respondents.

15. In cross-examination, he admitted that he has not seen the originals of the documents produced by him. The petitioner had never been charge-sheeted by the committee. It was a fact finding inquiry. He denied that the petitioner had not been associated in the enquiry. There is no record to show that any notice had been issued to the petitioner or he remained present at the time of the enquiry. Volunteered that he was present in the campus. He clearly admitted that the statements of the witnesses recorded and the proceedings do not bear the signatures of the petitioner. He also admitted that no copy of proceedings had been supplied to the petitioner. He specifically denied that neither the petitioner was informed nor associated in the proceedings.

16. Mark R-1 is the copy of forwarding letter, Mark R-2 is the copy of proceedings of enquiry committee coupled with statements, Mark R-3 is the copy of office order.

17. Shri Vineet Kumar, Registrar of the respondent university had stepped into the witness box as RW-2. In his affidavit Ex. RW-2/A, preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he has also lend support to the allegations made in the reply by the respondents.

18. In cross-examination, he stated that neither any show cause notice nor charge-sheet had been issued to the petitioner. Volunteered that the petitioner himself admitted his guilt. He had to admit that Avtar Singh was not medically examined. According to him, Avtar was given beatings by Pankaj Sharma, Sunil Kumar and Girdhar etc. He was specific that the other officials who were involved in the alleged incident were only warned to be careful in future. Neither second show cause notice was issued nor compensation, gratuity etc., was paid to the petitioner at the time of termination.

19. Admittedly, the services of the petitioner had been engaged as an Ambulance driver w.e.f. 01.10.2010 and he had worked as such till 21.08.2017, on which date his services were terminated vide office order of even date, copy of which is placed on record as Mark R-3. As per this office order the petitioner is claimed to have physically assaulted the Security Officer, had remained absent from duty and had caused disturbance in the campus by unlawful act. Manifest that the petitioner is claimed by the respondents to be guilty of misconduct and dereliction in duties.

20. Since, the petitioner as per his pleadings and evidence has specifically claimed that there was no misconduct on his part nor there was any dereliction in duties by him, it was incumbent upon the respondents to have conducted a regular departmental enquiry and to have laid a chargesheet against the petitioner regarding the acts of misconduct and dereliction of duties on his

part. Admittedly, so was not done by the respondents, as is evident from the testimony of the witnesses examined by the respondents as RW-1 Dr. S.C Sharma and RW-2 Shri Vineet Kumar, who both clearly admitted while under cross examinations that no show cause notice had been issued to the petitioner nor any charge-sheet was served upon him. It has been laid down by the Hon'ble Supreme Court in ***Nar Singh Pal Vs. Union and India and ors., 2000 LLR 577*** that if an order has been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the appellants arbitrarily by paying him the retrenchment compensation. Therefore, the present is a case where the termination of the petitioner is based on no enquiry and no charge. Hence, it becomes a case of illegal retrenchment. It has been laid down in ***Sachiv, Krishi Upaj Mandi Samiti, Sanawad Vs. Mahendra Kumar S/o Mangi Lal Tanwaro, 2004 LLR 405*** that where the termination of an employee is based on no inquiry, no charge and not by way of punishment, it becomes a case of illegal retrenchment. Faced with the situation, it was contended by the learned counsel for the respondents that an enquiry stood conducted against the petitioner, as is evident from the proceedings of enquiry committee, copy of which is placed on record as Mark R-2. This cannot be accepted. Firstly, such proceedings have not been duly proved and exhibited on record by the respondents. Merely a photocopy of the proceedings was placed and marked as Mark R-2, without producing the original on record. Secondly, RW-1 Dr. S.C. Sharma, who is claimed by the respondents to be one of the members of the enquiry committee, has categorically admitted that it was merely a fact finding enquiry and that the petitioner had not been charge-sheeted. Similarly, RW-2 Shri Vineet Sharma also clearly admitted that neither any show cause notice had been issued nor any charge-sheet had been served upon the petitioner. Then, there is also nothing on record to show that the petitioner at any point of time had appeared and had been associated in the alleged fact finding enquiry. No record showing the presence of the petitioner in the said enquiry was produced. It has been laid down by the Hon'ble Supreme Court in ***Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar, 2008 LLR 428*** that a finding of misconduct arrived on the basis of preliminary enquiry by the employer that too behind the back of the employee, cannot make foundation of the order of termination. So, the aforesaid documentary evidence would be of no help to the respondents, in the absence of any regular departmental enquiry having been conducted against the petitioner.

21. Since, it stands proved on record that without conducting any regular departmental enquiry and without putting a charge to the petitioner, he was held to be guilty of misconduct and for dereliction in duties, his termination is in contravention of the provisions of the Act and for this reason, the same is held to be illegal and improper. No doubt, the respondents/employer could have led evidence for the first time before this Court to prove the guilt of the petitioner-workman, but so has also not been done in the present case by the respondents. Avtar Singh, the Security Officer, who is alleged to have been assaulted by the petitioner was not cited and examined as a witness by the respondents. Accordingly, the order of termination of services of the petitioner vide office order dated 21.08.2017 (Mark R-3) is hereby set aside and quashed.

22. Even otherwise, it is specifically admitted by RW-2 Shri Vineet Kumar that the other officials who were involved in the alleged incident were only warned to be careful in future. In ***Pawan Kumar Agrwala Vs. General Manager-ii and Auth. State Bank of India and Ors. 2016 LLR 159***, it has been laid down by the Hon'ble Supreme Court that punishment is discriminatory if similarly situated another delinquent employee is let off lightly with stoppage of increment. So, also the punishment of the petitioner is vitiated being discriminatory. Therefore, the petitioner is entitled to reinstatement in service with seniority and continuity.

23. The petitioner as per his pleadings has claimed full back-wages. Although, PW-1, the petitioner claimed in his chief examination that he be given back-wages, but when his cross-examination is seen, he has self-stated that he is driving private vehicles and his entire family is

dependent upon him. He also clearly admitted that almost Rs. 15,000 to Rs. 20,000/- are spent on the upkeep of the family.

24. Since, in the case in hand, the petitioner is shown to be gainfully employed, therefore, he cannot be held entitled to full back-wages, but however, I am of the view that as the respondents have not shown that the petitioner was getting the same or substantially the similar emoluments, he was drawing prior to the termination of his services, *i.e.* Rs. 8,100/- per month with Rs. 500/- per month as allowance, as admitted by the parties, the petitioner is held entitled to 25% of the back-wages from the date of his illegal termination *i.e.* 21.08.2017 till his reinstatement. This issue is decided accordingly.

ISSUE NO. 2

25. No evidence of suppression of material facts and the petitioner having not approached the Court with clean hands has been led on record by the respondents. Moreover, this issue was not pressed for at the time of arguments by the learned counsel appearing for the respondents. Accordingly, this issue is decided in the negative and against the respondents.

ISSUE NO. 3

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

RELIEF

27. As a sequel to my above discussion and findings on issues no. 1 & 3 above, the claim of the petitioner succeeds and is hereby partly allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity with effect from the date of his termination along-with 25% of the back-wages. The payment of back-wages shall be payable within a period of three months from the date of publication of the award, failing which, the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th Day of January, 2024.

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

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

Reference Number : 289 of 2020

Instituted on : 05-11-2020

Decided on : 16-01-2024

Sangeeta Singh w/o Shri Dalip Singh c/o Dr. Yaad Ram, Village Sansiwala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

VERSUS

The Factory Manager/Managing Director M/s A&A Modular System, Plot No. 139, Village Sansiwala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

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

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

For the Respondent : Shri Satish Kumar, Advocate

AWARD

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

"**Whether termination of the services of Smt. Sangeeta Singh w/o Shri Dalip Singh c/o Dr. Yaad Ram Village Sansiwala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. by the Managing Director M/s A&A Modular System, Plot No. 139, Village Sansiwala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. w.e.f. 23.03.2020 without complying with the provisions of Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"**

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a worker (helper) by the respondent on 27.09.2007, but no letter of appointment was issued. Her services were illegally terminated by the respondent without issuing any chargesheet and without conducting any departmental enquiry. She had worked with the respondent till 18.05.2020 and had completed 240 working days in each calendar year. During this period, she had worked with utmost honesty and dedication. However, the respondent had misbehaved with the petitioner. While terminating her service, the respondent has not complied with the provisions of Section 25-F of the Act. Her juniors are still working with the respondent, which is against the principle of "last come first go". Since her termination, she is unemployed. It is, thus, prayed that the claim petition be allowed and the respondent be directed to reinstate her in service with seniority, continuity and full back-wages. A prayer has also been made that the respondent be burdened with costs of litigation quantified at ` 30,000/- and damages quantified at ` 2,00,000/- for her harassment.

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

4. The petition was contested by the respondent taking preliminary objection regarding lack maintainability, cause of action and locus standi. On merits, it is admitted that the petitioner was engaged by the respondent, but it was claimed that she was engaged in the year, 2010. It is denied that her services have been terminated illegally. It is submitted that as there was insurgence

worldwide due to Covid-19 pandemic, the Government of India had imposed a countrywide lock-down in the month of March, 2020, so the establishment of the respondent had to be closed. Since, the petitioner was not disciplined towards the work, show cause notices and warning letters had been issued to her. It is specifically denied that the petitioner had completed 240 days in each calendar year and that she had worked till 18.05.2020. She had been remaining absent from the work, without prior intimation. It has also been denied that the respondent has violated any of the provisions of the Act. After the lock-down, the respondent had called the employees back to work. All the directions passed by the Government from time to time had been followed. The full strength of workers was not possible in establishment as per the norms prevalent during the period of Covid. The petitioner is denied to be unemployed and it is alleged that she has been continuously working in other establishment(s). By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. No rejoinder was filed by the petitioner.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 23.02.2022:

1. Whether the termination of the petitioner by the respondent w.e.f. 23.03.2020 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? . .*OPP.*

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

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

4. Relief.

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

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

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

Issue No.1	:	Yes.
Issue No.2	:	Entitled to re-instatement with seniority and continuity with full back-wages.
Issue No. 3	:	No
Relief	:	Reference is answered in affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1& 2.

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

11. As per the petitioner, she had been engaged as a helper by the respondent and had worked continuously w.e.f. 27.09.2007 till 18.05.2020, on which date her services were terminated without following the mandatory provisions of the Act. So, she is entitled to be re-instated in service by the respondent on the same post and with all service benefits including full back-wages.

12. Per contra, the respondent admitted that though the petitioner was an employee of the company, but it was contended that she had been taken on rolls in the year, 2010. It was also claimed that as the petitioner was not dedicated towards her work and had been absenting herself without intimation, several show cause notices and warning letters had been issued to her. Her services had never been terminated by the respondent, so it was not liable to reinstate the petitioner in service.

13. In support of her case, Ms. Sangeeta Singh (petitioner) stepped into the witness box as PW-1. In her affidavit Ex. PW-1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

14. In the cross-examination, she stated that she is not working anywhere. She had worked with the respondent from the year 2007 to the year 2020. She had gone to join her duty on 18.05.2020, but was not allowed to enter inside the gate. She specifically denied that she had not worked continuously with the respondent. She also denied that as she was not devoted towards her work, many notices had been issued to her for absence without any kind of sanctioned leave. It was also denied by her that she had been asked by the company many a times to join the duty and she herself had abandoned the job. She specifically denied that her services were never terminated by the respondent.

15. Mark P-1 is the copy of EPF statement, Ex. PW-1/B is the information obtained under RTI Act, while Ex. PW-1/C is copy of demand notice and Ex. PW-1/D is the reply.

16. Conversely, the respondent examined Shri Pushp Raj, Manager HR (authorized person), M/s A&A Modular System, Sansiwala, as RW-1. In his affidavit Ex. RW-1/A, preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

17. In cross-examination, he denied that the petitioner was engaged as worker by the respondent on 27.09.2007. Self-stated that she was engaged on 01.04.2010. However, he admitted that she had worked with the respondent till 18.5.2020. He denied that the petitioner had been stopped from resuming her duties after 18.5.2020. Self-stated that there was a lock-down declared during that period. He specifically admitted that the respondent had been allowed to work with 50% strength during the period. He denied that the petitioner was not asked to join her duties. He admitted that no enquiry or show cause notice was issued to the petitioner. He denied that the petitioner had worked continuously for 240 working days. He had to admit that the abstract of attendance registered, which is maintained by the company, was not produced. He further admitted that the persons engaged with the petitioner are still working in the company. He also admitted that some workers have been engaged after 18.05.2020. He clearly admitted that no action had been taken on the show cause notices issued to the petitioner. He admitted that the work which was being performed by the petitioner is still available.

18. Ex. R-1 is the authority letter, Mark RX-1 is the copy of application moved by the petitioner, Mark RX-2 is the copy of demand notice, Mark RX-3 is copy of the reply of the

respondent, Mark RX-4 is the copy of letter dated 27.06.2020, Mark RX-5 is the copy of letter dated 29.08.2020 Mark RX-6 is the photo I.D of the petitioner and Mark RX-7 is her form, Mark RX-8 to Mark RX-22 are copies of show cause notices issued to the petitioner by the respondent, Mark RX-23 is copy of details of attendance of the petitioner, Mark RX-24 is copy of application of the petitioner to resume her duty, while Mark RX-25 to Mark RX-32 are the replies to the show cause notices furnished by the petitioner.

19. The engagement of the petitioner as a worker (helper) is not in dispute. As per the petitioner, she was initially engaged as a helper by the respondent in September, 2007 and that she had worked as such till 18.5.2020. The respondent in the reply though admitted that the petitioner had worked in the company as helper, but it was specifically claimed that she had initially been engaged in the year 2010. No details of work have been placed on record by the petitioner. Although, the respondent has brought on record the details of work of the petitioner as Mark RX-23, but the same cannot be taken into consideration having not been duly proved and exhibited on record. While under cross-examination RW-1 Shri Pushp Raj, Manager HR was categorical that an attendance register is maintained by the company and that the abstract of the same has not been placed on record. It is well settled that the parties must lead best available evidence on record. Anyhow, RW-1 Shri Pushp Raj in his cross-examination has specifically self-stated that the petitioner was engaged on 01.04.2010. This witness of the respondent was categorical that the petitioner had worked with the respondent till 18.05.2020. It is well settled that admission is the best piece of evidence and the facts admitted need not be proved. So, it can safely be held that the petitioner had initially been engaged in the month of April, 2010 by the respondent as a helper and that she had worked as such till 18.05.2020.

20. A plea was taken by the respondent that the petitioner was a casual worker and she had been absenting herself without any intimation from time to time. She, as per the case put to her by the respondent in her cross-examination, had left the job of her free will and volition. Manifest that the respondent has tried to take a stand that the petitioner had abandoned the job. It is well known that abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. Though, photocopies of various notices served upon the petitioner by the respondent have been placed on record, but the same have also not been proved in accordance with law. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri Pushp Raj (RW-1) clearly admitted while under cross-examination that no action on the show cause notices had been taken against the petitioner. He also clearly admitted that no enquiry had been conducted against the petitioner. Therefore, the so called plea of abandonment put forth by the respondent/employer is neither established on record, nor is tenable.

21. It was claimed by the petitioner that she had worked continuously with the respondent up till May, 2020 and as such had been completing 240 days in each calendar year.

22. 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 she had worked for 240 days in the preceding twelve calendar months prior to her 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 held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of her alleged termination, which as per the reference took place on 23.03.2020. The petitioner was specific in her evidence that from the date of her engagement with the respondent as a helper, she had continuously worked till 18.05.2020. At the risk of repetition, though RW-1 Shri Pushp Raj claimed that the petitioner had initially been engaged on 01.04.2010, but he was categorical that she had worked with the respondent till 18.05.2020. The stand taken by the respondent that the petitioner was habitual of absenting herself from duty stands already negated by me above. The details of work of the petitioner (Mark RX-23) has also been held above to be of no help to the respondent in the absence of the duty register pertaining to the petitioner having been brought on record. No other ocular or documentary evidence has been led on record by the respondent to show that the petitioner had not continuously worked for a period of 240 days in a block of twelve calendar months prior to her alleged termination and that there had been breaks on her part in her duty.

24. Since, the petitioner is proved to have completed 240 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, he services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not complied in letter and spirit by the respondent, as no retrenchment compensation had been paid, nor any requisite notice had been served upon the petitioner.

25. In view of the above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, her termination has to be held as illegal, unlawful and unjustified.

26. Even otherwise, there is no denial of the fact that there was an outbreak of pandemic Corona Virus -2019, much known as COVID-19 in the year 2020. Admittedly, the entire country was put under lock-down from 24.03.2020 to 08.06.2020 and in this regard instructions stood issued by the Ministry of Labour & Employment Government of India, vide DO No. M-11011/08/2020-Media dated 20.03.2020, which reads as under:

> "**The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State**.

27. So also in view the aforesaid notification, the termination of the services of the petitioner during the COVID-19 pandemic, is illegal and unjustified.

28. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

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

29. The petitioner merely claimed in the statement of claim that the respondent has violated the provisions of Section 25-G of the Act. The statement of claim is non-existent in the names of the persons, who allegedly were retained, being junior to her, after her retrenchment. No seniority list of helper category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/employer. It was merely suggested to RW-1 Pushp Raj by the petitioner that persons engaged with her are still working in the company. He admitted the suggestion. The putting of this suggestion by the petitioner to the witness of the respondent and it's admission by him (RW-1) only goes to show that the respondent/employer has only retained those persons, who were initially engaged with the petitioner and not her juniors. Therefore, it cannot be held that the respondent has violated the provisions of Section 25-G of the Act.

30. However, the petitioner's allegation that the respondent has violated the provisions of Section 25-H of the Act, to my mind, appears to have been substantiated. RW-1 Shri Pushp Raj while under cross-examination clearly admitted that some workers have been engaged after 18.05.2020. Manifest that there is an admission on the part of the respondent that new/fresh hands have been appointed by the respondent after the alleged termination of the petitioner. There is not an iota of evidence on record to show that a notice was given to the petitioner at any point of time calling her back for re-employment, before the engagement of new/fresh hands. Therefore, the respondent can be said to have been proved to have violated the provisions of Section 25-H of the Act. In case titled as ***State of Himachal Pradesh and another's Vs. Bhatag Ram and another, Latest HLJ 2007 (HP) 903***, it has been held by our own Hon'ble High Court that it is not necessary for a workman to complete 240 working days during twelve calendar months for taking the benefits of Section 25-G and 25-H of the Act.

31. In the back-drop of the aforesaid events, it can safely be held that the termination of the services of the petitioner, and that too during the period of pandemic Covid-19, was in violation of the provisions of Sections 25-B, 25-F and 25-H of the Act. The termination is held to be illegal, unlawful and unjustified. Hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

32. The petitioner as per her pleadings has claimed full back-wages. As PW-1 she claimed that from the date of her illegal termination, she has remained unemployed. Her such testimony has remained un-challenged in the cross-examination.

33. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324***, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

34. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then it had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her services. Since, in the case in hand the petitioner has shown that she was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. No grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of her illegal termination, as mentioned in the reference as 23.03.2020, till her reinstatement at the rate of minimum wages, as notified by the State Government from time to time. Therefore, both these issues are answered in the affirmative and in favour of the petitioner.

ISSUE NO. 3

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

RELIEF.

36. As a sequel to my above discussion and findings on issues no. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity with effect from the date of her termination along-with full back-wages. The payment of back-wages shall be payable within a period of three months from the date of publication of award, failing which, the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

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

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

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

Reference Number	:	290 of 2020
Instituted on	:	05-11-2020
Decided on	:	17-01-2024

Manju Devi w/o Shri Santosh Thakur, c/o Sh. Sidhi Mahato, Village Mardawala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

VERSUS

The Factory Manager/Managing Director M/s A&A Modular System, Plot No. 139, Village Sansiwala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

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

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

For the Respondent : Shri Satish Kumar, Advocate

AWARD

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

"**Whether termination of the services of Smt. Manju Devi w/o Shri Santosh Thakur, c/o Sh. Sidhi Mahato, Village Mardawala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. by the Managing Director M/s A&A Modular System, Plot No. 139, Village Sansiwala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. w.e.f. 23.03.2020 without complying with the provisions of Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including back-wages, seniority, past service benefits and compensation, the above worker is entitled to from the above employer/management?"**

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a worker (helper) by the respondent on 03.01.2012, but no letter of appointment was issued. Her services were illegally terminated by the respondent without issuing any chargesheet and without conducting any departmental enquiry. She had worked with the respondent till 18.05.2020 and had completed 240 working days in each calendar year. During this period, she had worked with utmost honesty and dedication. While terminating her service, the respondent has not complied with the provisions of Section 25-F of the Act. Her juniors are still working with the respondent, which is against the principle of "last come first go". Since her termination, she is unemployed. It is, thus, prayed that the claim petition be allowed and the respondent be directed to reinstate her in service with seniority, continuity and full back-wages. A prayer has also been made that the respondent be burdened with costs of litigation quantified at Rs. 30,000/- and damages quantified at Rs. 2,00,000/- for the harassment.

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

4. The petition was contested by the respondent taking preliminary objections regarding lack maintainability, cause of action and locus standi. On merits, it is admitted that the petitioner was engaged by the respondent, but it was denied that she was engaged in the year, 2012**.** It is denied that her services have been terminated illegally. It is submitted that as there was insurgence worldwide due to Covid-19 pandemic, the Government of India had imposed a countrywide lock-down in the month of March, 2020, so the establishment of the respondent had to be closed. Since, the petitioner was not disciplined towards the work, show cause notices and warning letters had been issued to her. It is specifically denied that the petitioner had completed 240 days in each calendar year and that she had worked till 18.05.2020. She had been remaining absent from the

work, without prior intimation. It has also been denied that the respondent has violated any of the provisions of the Act. After the lock-down, the respondent had called the employees back to work. All the directions passed by the Government from time to time had been followed. The full strength of workers was not possible in establishment as per the norms prevalent during the period of Covid. It is denied that the petitioner has remained unemployed w.e.f. 18.05.2020. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. No rejoinder was filed by the petitioner.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 23.02.2022:

1. Whether the termination of the petitioner by the respondent w.e.f. 23.03.2020 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? . .*OPP.*

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

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

4. Relief.

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

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

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

Issue No.1	:	Yes
Issue No.2	:	Entitled to re-instatement with seniority and continuity with full back-wages.
Issue No. 3	:	No
Relief	:	Reference is answered in the affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

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

11. As per the petitioner, she had been engaged as a helper by the respondent and had worked continuously *w.e.f.* 03.01.2012 till 18.05.2020, on which date her services were terminated

without following the mandatory provisions of the Act. So, she is entitled to be re-instated in service by the respondent on the same post and with all service benefits including full back-wages.

12. Per contra, the respondent admitted that though the petitioner was an employee of the company, but it was denied that she had worked since 03.01.2012 till 18.05.2020. It was also claimed that as the petitioner was not dedicated towards her work and had been absenting herself without intimation, several show cause notices and warning letters had been issued to her. Her services had never been terminated by the respondent, so it was not liable to reinstate the petitioner in service.

13. In support of her case, Ms. Manju Devi (petitioner) stepped into the witness box as PW-1**.** In her affidavit Ex. PW-1/A**,** submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

14. In the cross-examination, she denied that she was not regular in performing her job. She further denied that written a apology dated 22.06.2013 had been tendered by her. She also denied that she had been asked vide letter dated 29.08.2020 to report for duty. She stated that she is not working anywhere. She had worked with the respondent from the year 2012 till the year 2020. She had gone to join her duty on 18.05.2020, but was not allowed to enter inside the gate. She specifically denied that she had not worked continuously with the respondent. She also denied that as she was not devoted towards her work, many notices had been issued to her for her absence, without any kind of sanctioned leave. It was also denied by her that she had been asked by the company many a times to join the duty and she herself had abandoned the job. She specifically denied that her services were never terminated by the respondent.

15. Ex. PW-1/B is the copy of her identity card, Mark P-1 is the copy of EPF statement, Ex. PW-1/C is the copy of demand notice and Ex. PW-1/D is the copy of reply.

16. Conversely, the respondent examined Shri Pushap Raj, Manager HR (authorized person), M/s A&A Modular System, Sansiwala, as RW-1. In his affidavit Ex. RW-1/A, preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

17. In cross-examination, he admitted that the petitioner was engaged as a worker on 03.01.2012 and had worked as such till 18.05.2020 with the respondent. He denied that the petitioner had been stopped from resuming her duties after 18.05.2020. Self-stated that there was a lock-down declared during that period. He specifically admitted that the respondent had been allowed to work with 50% strength during the period. He denied that the petitioner was not asked to join her duties. He admitted that no enquiry or show cause notice was issued to the petitioner. He denied that the petitioner had worked continuously for 240 working days. He had to admit that the abstract of attendance registere, which is maintained by the company, was not produced. He further admitted that the persons engaged with the petitioner are still working in the company. He also admitted that some workers have been engaged after 18.05.2020. He clearly admitted that no action had been taken on the show cause notices issued to the petitioner. He admitted that the work which was being performed by the petitioner is still available.

18. Ex. R-1 is the authority letter, Mark RX-1 is copy of letter dated 29.08.2020, Mark RX-2 is copy of reply dated 27.08.2020, Mark RX-3 is copy of reply dated 27.06.2020, Mark RX-4 & Mark RX-5 are the copies of applications, Mark RX-6 is copy of form B, Mark RX-7 is copy of warning letter dated 20.09.2019, Mark RX-8 is copy of show cause notice dated 03.09.2016, Mark RX-9 is copy of warning letter dated 30.11.2015, Mark RX-10 is copy of application dated

22.06.2013, Mark RX-12 is copy of show cause notice dated 24.05.2013 and Mark RX-13 is the copy of details of attendance of the petitioner, dated 03.01.2012.

19. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/company. The petitioner specifically pleaded and led evidence to the effect that she was engaged on 03.01.2012 and had remained ns service till 18.05.2020. Though, the respondent denied this fact in the reply, but RW-1 Shri Pushp Raj while under cross-examination was categorical that the petitioner had worked with the respondent/company w.e.f. 03.01.2012 till 18.5.2020. It is by now well settled that admission is the best piece of evidence. So, it can safely be held that the petitioner had been engaged by the respondent/company on 3.1.2012 and she had worked there till 18.05.2020.

20. Now, the point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job?

21. A plea was taken by the respondent that the petitioner was a casual worker and she had been absenting herself without any intimation from time to time. She, as per the case put to her by the respondent in her cross-examination, had left the job of her free will and volition. Manifest that the respondent has tried to take a stand that the petitioner had abandoned the job. It is well known that abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. Although, from the details of work of petitioner (Mark RX-13), the respondent has tried to demonstrate that the petitioner had not completed 240 days in each calendar year, but in my humble opinion that the so called details of work cannot be taken into consideration, as the same has not been duly proved and exhibited on record. Merely a photocopy was placed and marked, without producing on record the attendance register, which as per RW-1 Shri Pushp Raj is being maintained by the company. Further, photocopies of various notices, alleged to have been served upon the petitioner have also not been proved in accordance with law by the respondent. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri Pushap Raj (RW-1) clearly admitted while under cross-examination that no action on the show cause notices had been taken against the petitioner. He also clearly admitted that no inquiry had been conducted against the petitioner. In ***Satbir Singh Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another, 2017LLR 35***, it has been laid down by the Hon'ble Punjab and Haryana High Court that the plea of abandonment of job, taken by the management, in the absence of issuance of notice to the workman in this respect, while he was absenting from duty, is not sustainable. Therefore, the so called plea of abandonment put forth by the respondent is neither established on record, nor is tenable.

22. It was claimed by the petitioner that she had worked continuously with the respondent up till May, 2020 and as such had been completing 240 days in each calendar year.

23. 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 she had worked for 240 days in the preceding twelve calendar months prior to her 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 held 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.

24. 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 of 240 days in a block of 12 calendar months anterior to the date of her alleged termination, which as per the reference took place on 23.03.2020. The petitioner was specific in her evidence that from the date of her engagement with the respondent as a helper, she had continuously worked till 18.05.2020. RW-1 Shri Pushap Raj has clearly admitted that the petitioner had initially been engaged on 03.01.2012 and she had worked with the respondent till 18.05.2020. The stand taken by the respondent that the petitioner was habitual of absenting herself from duty stands already negated by me above. The details of work of the petitioner (Mark RX-13) has also been held above to be of no help to the respondent in the absence of the duty register pertaining to the petitioner having been brought on record. No other ocular or documentary evidence has been led on record by the respondent to show that the petitioner had not continuously worked for a period of 240 days in a block of twelve calendar months prior to her alleged termination and that there had been breaks on her part in her duty.

25. Since, the petitioner is proved to have completed 240 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not complied in letter and spirit by the respondent, as no retrenchment compensation had been paid, nor any requisite notice had been served upon the petitioner.

26. In view of the above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, her termination has to be held as illegal, unlawful and unjustified.

27. Even otherwise, there is no denial of the fact that there was an outbreak of pandemic Corona Virus -2019, much known as COVID-19 in the year 2020. Admittedly, the entire country was put under lock-down from 24.03.2020 to 08.06.2020 and in this regard instructions stood issued by the Ministry of Labour & Employment Government of India, vide DO No. M-11011/08/2020-Media dated 20.03.2020, which reads as under:

> "**The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State**.

28. So also in view the aforesaid notification, the termination of the services of the petitioner during the COVID-19 pandemic, is illegal and unjustified.

29. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

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

30. The petitioner merely claimed in the statement of claim that the respondent has violated the provisions of Section 25-G of the Act. The statement of claim is non-existent in the names of the persons, who allegedly were retained, being junior to her, after her retrenchment. No seniority list of helper category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/employer. It was merely suggested to RW-1 Pushap Raj by the petitioner that persons engaged with her are still working in the company. He admitted the fact. The putting of this suggestion by the petitioner to the witness of the respondent and it's admission by him (RW-1) only goes to show that the respondent/employer has only retained those persons, who were initially engaged with the petitioner and not her juniors. Therefore, it cannot be held that the respondent has violated the provisions of Section 25-G of the Act.

31. However, the petitioner's allegation that the respondent has violated the provisions of Section 25-H of the Act, to my mind, appears to have been substantiated. RW-1 Shri Pushap Raj while under cross-examination clearly admitted that some workers have been engaged after 18.05.2020. Manifest that there is an admission on the part of the respondent that new/fresh hands have been appointed by the respondent after the alleged termination of the petitioner. There is not an iota of evidence on record to show that a notice was given to the petitioner at any point of time calling her back for re-employment, before the engagement of new/fresh hands. Therefore, the respondent can be said to have been proved to have violated the provisions of Section 25-H of the Act. In case titled as ***State of Himachal Pradesh and another's Vs. Bhatag Ram and another, Latest HLJ 2007 (HP) 903***, it has been held by our own Hon'ble High Court that it is not necessary for a workman to complete 240 working days during twelve calendar months for taking the benefits of Section 25-G and 25-H of the Act.

32. In ***Municipal Board Rajsamand Vs. Judge, Labour Court, Udaipur and another, 2017 LLR 153***, it has been held by the Hon'ble Rajasthan High Court that termination of an employee who has served in excess of 240 days without following the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act, is illegal attracting reinstatement with back-wages.

33. In the back-drop of the aforesaid events, it can safely be held that the termination of the services of the petitioner, and that too during the period of pandemic Covid-19, was in violation of the provisions of Sections 25-B, 25-F and 25-H of the Act. The termination is held to be illegal, unlawful and unjustified. Hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

34. The petitioner as per her pleadings has claimed full back-wages. As PW-1 she claimed that from the date of her illegal termination, she has remained unemployed. Her such testimony has remained un-challenged in the cross-examination.

35. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324***, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving

him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

36. In ***Cargo Motors (Gujrat) Limited Vs. Kritikant Shivajirav Jadav, Letters Patent Appeal No. 1512 of 2019 decided on 07.08.2023***, it has been held by the Hon'ble High Court of Gujrat at Ahemdabad that it is settled law that in a case of termination of employment, though award of back-wages is not automatic with the award of reinstatement, but in case the fault is found on the part of the employer, 100% wages can be provided. The fundamental principle is that no one can take benefit of its own wrong.

37. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then it had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her services. Since, in the case in hand the petitioner has shown that she was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. No grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of her illegal termination, as mentioned in the reference as 23.03.2020, till her reinstatement at the rate of minimum wages, as notified by the State Government from time to time. Therefore, both these issues are answered in the affirmative and in favour of the petitioner.

ISSUE NO. 3

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

RELIEF

39. As a sequel to my above discussion and findings on issues no. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity with effect from the date of her termination along-with full back-wages. The payment of back-wages shall be payable within a period of three months from the date of publication of award, failing which, the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

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

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

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

Reference Number : 23 of 2020

Instituted on : 22.02.2020

Decided on : 19.01.2024

Navita Devi w/o Shri Yash Pal, r/o Village Kanon, V.P.O. Roudi, Tehsil Kasauli, District Solan, H.P. . . *Petitioner*.

Versus

The Registrar, Maharishi Markendeshwar Medical College & Hospital, Village Lado, P.O. Sultanpur, Tehsil & 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 : Ms. Deepa Suman, Advocate

AWARD

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

"**Whether termination of the services of Smt. Navita Devi w/o Shri Yash Pal, r/o Village Kanon, V.P.O. Roudi, Tehsil Kasauli, District Solan, H.P. w.e.f. 01.04.2019 by the management of MM Medical College & Hospital, Sultanpur (Lado), P.O. Kumarhatti, Tehsil & District Solan, H.P. without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer?"**

2. The case of the petitioner, as it emerges from the statement of claim is that she was engaged as an attendant (helper) and had commenced her service carrier with the respondent in the month of June, 2013. She was confirmed on 02.06.2014. She has performed her duty with sincerity and honesty and had continued serving the respondent till her oral illegal termination on 01.04.2019. She had been illegally restrained from attending her duties and her services were terminated without any notice, retrenchment compensation and that too without necessary compliance of Section 25-F of the Act. The termination/dismissal orders are not speaking orders and the refusal of work on 01.04.2019 amounts to unfair labour practice, as the petitioner was punished for unknown reasons. She has not been served with any show cause notice. No enquiry had been conducted in accordance with law of natural justice and no opportunity had ever been afforded to her to explain her position. Her termination is duly covered under Section 2(oo) of the Act. Workmen junior to her have been retained and new workers have also been engaged, thereby violating the provisions of Sections 25-G & 25-H of the Act. She had worked for more than 240 days in a calendar year preceding her termination. The action of the respondent in terminating the services of the petitioner is biased, unfair and unreasonable as the same had been passed by

adopting the policy of "hire and fire". Her sudden removal from the employment has made her integrity doubtful in the eyes of one and all. She is unemployed. She, thus, has prayed that her termination be declared illegal and unjustified and she be ordered to be reinstated with full back-wages, seniority and other consequential service benefits throughout with costs.

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

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability, not approaching the Court with clean hands, the claim being filed on frivolous grounds, cause of action, the petitioner being not a workman, the claim being bad for non-joinder of necessary parties, abandonment, the respondent not being an "industry", the petitioner being a contractual employee and that there exists no industrial dispute. On merits, it is admitted that the petitioner was engaged as an attendant in the year 2013. It is alleged that she had never been appointed by the respondent, rather she was an outsourced contractual employee employed through the contractor. It is denied that the petitioner had performed her duty with sincerity and honesty. However, it is submitted that she was never serious and punctual towards her assigned work, hence, show cause notices had been issued to her by her employer (contractor). A complaint regarding theft of a mobile phone had been received against her from the faculty of Psychiatry Department and after making inquiry, the same had been recovered from her. On fear of complaint being filed, the petitioner herself had left the job without intimation and her services had never been terminated. Since, she was the employee of contractor, hence, the respondent is not at all held accountable for her appointment, removal and dismissal. It is specifically denied that there has been violation of any of the provisions of the Act by the respondent. Hence, it is prayed that the petition be dismissed.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, *vide* order dated 02.03.2022:

1. Whether the termination of the services of petitioner by the respondent w.e.f. 01.04.2019, without complying with the provisions of the Industrial Dispute Act, is illegal and justified as alleged? . . *OPP*.

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

3. Whether there was no employer/ employee relationship between the parties as the dispute does not fall within the preview of Industrial Dispute Act, as alleged? . . *OPR*.

4. Relief.

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

8. Arguments of the learned Authorized Representative for the petitioner and the learned Counsel for the respondent heard and records gone through.

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

Issue No.1	:	Yes
Issue No. 2	:	Entitled to re-instatement with seniority and continuity in service with full back-wages.
Issue No. 3	:	No
Relief	:	Reference is answered in the affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

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

11. In support of her case, Ms. Navita Devi (petitioner) stepped into the witness box as PW-1**.** In her affidavit Ex. PW-1/A**,** submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

12. In cross-examination, she stated that she was appointed by MMU, but no appointment letter had been issued to her. Salary was being paid to her in cash and later it was credited in her account. Leave was being sanctioned by the department, where she was working. She specifically denied that her attendance was being marked by the contractor. Volunteered that, she had been marking her attendance in the bio-metric. It is denied that notices dated 2.8.2018, 1.9.2016, 28.4.2017 and 11.10.2017 had been issued to her. She categorically denied that Archita Staff Nurse had made a complaint against her regarding her working. She denied that the complaint had been forwarded for strong recommendation by Associate Professor. She further denied that show cause notices had been received by her**.**

13. In order to rebut the case of the petitioner, the respondent has examined Shri Ajay Singhal, Registrar of the respondent as (RW-1). In his affidavit Ex. RW-1/A**,** submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the reply filed by the respondent.

14. In cross-examination, he admitted that FIR has not been placed on record. He denied that the petitioner was under the overall control and supervision of Dr. Bhatnagar. No appointment letter issued by the contractor has been placed on record.

15. Ex. RW-1/B to Ex. RW-1/E are copies of show cause notices, Ex. RW-1/F is copy of complaint and Mark RX-1 is copy of complaint by Amrita.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri J.C. Bhardwaj, AR for the petitioner has contended with vehemence that the petitioner is squarely covered under the definition of "*workman"* in the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The petitioner was engaged as an attendant by the respondent and her services have been terminated illegally without complying with the provisions of the Act, as no notice or compensation was paid to her. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed.

18. *Per contra*, Ms. Deepa Suman, learned vice Counsel for the respondent urged that the the present claim petition is not maintainable as the respondent being an educational institution does not fall within the ambit of the Act. She further argued that the petitioner was not engaged by the respondent, but was an employee of the contractor. The services of the petitioner had never been terminated by the respondent, but she herself had abandoned the job without any intimation. It is, therefore, prayed that the claim petition may kindly be dismissed.

19. I have given a considerable thought to the submissions made for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act in play in the instant case.

The Industrial Disputes Act, 1947, is:

"*An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".*

Section 2(s) defines a Workman as:

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

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

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

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

iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]"

Section 2(oo) lays down the concept of retrenchment as:

"*Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

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

(c) termination of the service of a workman on the ground of continued ill-health"

21. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

"..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

22. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

"***The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as***

industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."

23. A perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provision itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" at least for the purposes of this Act.

24. It is the claim of the petitioner that she was an employee of respondent, whereas the stand of the respondent is that she was the employee of the contractor.

25. At this stage, it is necessary to refer to the provisions of Sections 7 & 12 of the Contract Labour (Regulation and Abolition) Act, 1970. Section 7 of the same reads as under:—

"***7. Registration of certain establishment***.—

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering office: in the prescribed manner for registration of the establishment……."

Section 12 of the same reads as under:—

"*12.* ***Licensing of contractors***.—

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and accordance with a licence issued in that behalf by the licensing officer……"

26. A bare perusal of the above two statutory provisions demonstrates that the establishment can be registered under the Act by following the provisions of Section 7 of the Act and similarly, a contractor can be granted licence under the Act in terms of the provisions of Section 12 thereof.

27. In the present case, it is an admitted position that neither the respondent was registered under the Act with the appropriate Authority nor the alleged contractor was possessing the licence to engage contract labour in terms of the Act. Nowhere, it has been pleaded nor any evidence has been led on record by the respondent that it had a certificate of registration from the prescribed authority and secondly, the contractor had a licence issued by the competent authority to deploy contract labour.

28. In case titled as "***International Airport Authority of India Vs. International Air Cargo Workers Union and another, (2009) 13 SCC*** *374"* it has been laid down by the Hon'ble

Supreme Court that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from the service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. A similar view has been taken by the Hon'ble Supreme Court in case titled "***Workmen of Nilgiri Cooperating Marketing Society Ltd. Vs. State of Tamilnadu, AIR 2004 SC 1639***".

29. From the case law cited hereinabove and from the pleadings and evidence on record, it can safely be concluded that the petitioner is an employee of the respondent and there exists a relationship of employee and employer between them. It is evident from the record that the petitioner had been working under the control and supervision of the respondent. There is not an iota of evidence on record to show that the alleged contractor had been giving any directions regarding the work to be carried out by the workman. There is nothing on record to show that either the contractor or his representative ever remained present to give instructions to the workman actually working in the premises of the respondent. There is no evidence on record to suggest that the contractor had been visiting the respondent to supervise the work of the petitioner. It has specifically been stated by PW-1 Navita Devi in her evidence that she had been engaged and had worked as an attendant with the respondent. She while under cross-examination was specific that earlier she had been receiving the salary in cash and thereafter in her account and that she had been marking her presence in the biometric system.

30. Though, the witness examined by the respondent as RW-1 Ajay Singhal maintained that the petitioner was an employee of the contractor. But, however, neither the contractor has been examined nor anything has been produced to remotely show that the salary of the petitioner was being disbursed through the contractor. The respondent has also not led any evidence to remotely show that her salary was being released by the contractor. However, in the cross-examination, this witness stated that no appointment letter issued by the contractor stands placed on record. No doubt, some show cause notices have been placed and exhibited on record by this witness as Ex. RW-1/B to Ex. RW-1/E, which are purported to have been issued by the contractor to the petitioner, but no evidence has been led on record nor the contractor has come on record to testify their veracity. Even, if, the same are taken into consideration, at best what could be inferred is that they have neither been issued by the respondent nor by the alleged contractor, rather they only bear the signatures of the petitioner at the end. Beyond that nothing has been placed on record by the respondent.

31. At the risk of repetition, as neither the respondent was having a certificate of registration in terms of the above mentioned law nor the contractor had a licence in terms thereof, and in view of the judgment of the ***Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and Other, AIR 1999 SC 1160***, once the so called contractor was not a licenced contractor under the Act, the inevitable conclusion is that the contract system was a mere camouflage which could easily be pierced and the real contractual relationship between the principal employer on the one hand and the employee on the other hand, can be visualized. That being the case, the very basis of the claim of the respondent stands eroded, for the reasons that the respondent, otherwise also, cannot be permitted to deny the rights of a workman or contest the claim of the worker on the grounds which are in violation of the law of the land.

32. Therefore, in the absence of the contractor who as per the respondent had allegedly engaged the workman being registered under the provision of Contract Labour Act and in the absence of the respondent being registered as an Establishment under the provisions of Contract Labour Act and in view of the law laid down by the Hon'ble Supreme Court in "***Steel authority of***

India Ltd., and Others Vs. National Union Waterfront Workers and ors., (2001) 7 SCC 1" , the petitioner has to be treated as an employee of the principal employer, that is the respondent.

33. It has been established on record by the petitioner that she had been in continuous service for a long time and definitely for more than a year. As per the petitioner, she had worked as an attendant with the respondent continuously from June, 2013 till 01.04.2019, when thereafter, she was not allowed to resume her duties by the respondent. So, it can safely be held that the petitioner had completed more than 240 days in twelve calendar months preceding her termination.

34. The respondent, however, has taken the plea that the petitioner had abandoned the job. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. It has been laid down by the Hon'ble Supreme Court in ***G.T Lad and ors. Vs. Chemicals and Fibers India Ltd., AIR 1979 SC 582*** that the finding of abandonment is a fact and the same has to be substantiated by leading evidence. In ***Eagle Hunter Solutions Ltd., Vs. Shri Prem Chand, 2019 (160) FLR 16***, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. It has been held by the Hon'ble Supreme Court in ***2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** that when a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls. It was further held that the principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

> ***"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."***

35. There is nothing on record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged wilful absence from duty**.**

36. The principle of "*last come first go*" is envisaged under Section 25G of the Act. The said Section provides:

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

37. The petitioner in her statement of claim and also in her evidence maintained that at the time her services were terminated, some juniors were retained by the respondent. This averment has not been established, as no seniority list of attendants has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

38. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no specific evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The self-serving testimony of the petitioner in this regard cannot be taken as a gospel truth in the absence of any other oral or documentary evidence on record. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

39. The petitioner as per her pleadings has claimed full back-wages. As PW-1, the petitioner claimed that from the date of her illegal termination, she has remained unemployed. Her such testimony has remained un-challenged in the cross-examination. She was neither cross-examined nor any suggestion was put to her that she was gainfully employed and was getting wages equal to the wages she was drawing from the respondent.

40. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324***, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

41. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then it had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of services. Since, in the case in hand, the petitioner has shown that she was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. Neither, it has been pleaded nor any grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of her illegal termination i.e 01.04.2019 till her reinstatement at the rate of minimum wages, as notified by the State Government from time to time from April, 2019 onwards. Therefore, issues no.1 & 2 are answered in the affirmative and in favour of the petitioner, while issue no. 3 is answered in the negative and against the respondent.

RELIEF

42. As a sequel to my above discussion and findings on issues no. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent to the petitioner within a period of three months from the date of publication of award, failing which, the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th Day of January, 2024.

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

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

Reference Number : 176 of 2018

Instituted on : 05.10.2018

Decided on : 19.01.2024

Dinesh Kumar s/o Shri Het Ram, r/o Village Sainj, PO Sajaila, Tehsil Arki, District Solan, H.P. . . *Petitioner*.

Versus

The Registrar, Maharishi Markendeshwar Medical College & Hospital, Village Lado, PO Sultanpur, Tehsil & 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 : Ms. Deepa Suman, Advocate

AWARD

The following reference petition has been received from the appropriate Government vide notification dated 22.06.2018, under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"), for legal adjudication:

"**Whether termination of the services of Shri Dinesh Kumar s/o Shri Het Ram, r/o Village Sainj, P.O. Sajaila, Tehsil Arki, District Solan, H.P. by the Registrar,**

Maharishi Markendeshwar Medical College & Hospital, Village Lado, PO Sultanpur, Tehsil & District Solan, H.P. w.e.f. 08.04.2017 without complying with the provisions of Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back-wages, re-instatement, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged and had commenced his service carrier with the respondent during the month of July, 2014. He had performed his duty with sincerity and honesty and continued serving the respondent till his oral illegal termination on 08.04.2017. He had been illegally restrained from attending his duties. He had proceeded on leave on 18.01.2017, as he had fallen seriously ill and when he had reported back on duty on 8.4.2017, he was not allowed to join by the respondent and his services were terminated without any notice, retrenchment compensation and that too without necessary compliance of Section 25-F of the Act. The termination/dismissal orders are not speaking orders and the refusal of work on 08.04.2017 amounts to unfair labour practice, as the petitioner was punished for unknown reasons. He had not been served with any show cause notice. No enquiry had been conducted in accordance with law of natural justice and no opportunity had ever been afforded to explain his position. His termination is duly covered under Section 2(oo) of the Act. Workmen junior to him have been retained and new workers have also been engaged, thereby violating the provisions of Sections 25-G & 25-H of the Act. He had worked for more than 240 days in a calendar year preceding his termination. The action of the respondent in terminating the services of the petitioner is biased, unfair and unreasonable as the same had been passed by adopting the policy of "hire and fire". His sudden removal from the employment has made his integrity doubtful in the eyes of one and all. He is unemployed. He, thus, has prayed that his termination be declared illegal and unjustified and he be ordered to be reinstated with full back-wages, seniority and other consequential service benefits throughout with costs.

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

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability, not approaching the Court with clean hands, the claim being filed on frivolous grounds, cause of action, the petitioner being not a workman, the claim being bad for non-joinder of necessary parties, the respondent not being an "industry", the petitioner being a contractual employee and that there exists no industrial dispute. On merits, it is admitted that the petitioner was engaged as an attendant during the month of July, 2014. It is alleged that he had never been appointed by the respondent, rather he was an outsourced contractual employee employed through the contractor. It is denied that the petitioner had performed his duty with sincerity and honesty and that he had proceeded on leave on 18.1.2017. It is alleged that on the said date, the petitioner was found absent from duty without any intimation. It is denied that the petitioner had returned back to join his duty at his work place on 8.4.2017 and that the respondent had terminated his services illegally and arbitrarily. The petitioner himself had left the job without intimation and his services had never been terminated. Since, the petitioner had failed to return within a reasonable period, his duties were assigned to some other employee by the respondent, as the post could not be left vacant. It is specifically denied that there has been violation of any of the provisions of the Act by the respondent. Hence, it is prayed that the petition be dismissed.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 01.01.2020:

1. Whether the termination of the petitioner w.e.f. 08.04.2017 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? If so, what relief the petitioner is entitled to? . . *OPP*.

2. Whether the claim is not maintainable as alleged, if so, its effects thereto? . .*OPR*.

3. Whether the petitioner is not a workman under the provisions of Section 2 (s) of the Industrial Disputes Act, 1947, as alleged, if so, its effect thereto? . . *OPR*.

4. Whether the petition is bad for non-joinder of necessary party as alleged, if so, its effect thereto? . . *OPR*.

5. Whether the claim is not maintainable as the respondent college does not fall under the provisions of Industry as defined in the Act, as alleged, if so, its effect thereto? . . *OPR*.

6. Relief

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

8. Arguments of the learned Authorized Representative for the petitioner and learned Counsel for the respondent heard and records gone through.

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

Issue No. 1 : Yes. Entitled to re-instatement with seniority and continuity with full back-wages.

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

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

REASONS FOR FINDINGS

ISSUES NO.1, 3 & 5

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

11. To substantiate his case, the petitioner namely Shri Dinesh Kumar has appeared in the witness box as (PW-1) and tendered in evidence his sworn affidavit Ex. PW-1/A, wherein he

reiterated almost all the averments as made in the claim petition. He also tendered in evidence a photocopy of medical certificate as Ex. PW-1/B and a photocopy of certificate Ex. PW-1/C.

12. In cross-examination, he stated that he was appointed in the year 2014. He admitted that the appointment letter dated 4.2.2016, is in his name. He specifically denied that he had been engaged by Ajay Contractor. He had been receiving the salary in his own account. His leave was being sanctioned by the Head of the Department, Dr. Shridhar. He categorically denied that his salary was credited from the account of Ajay Kumar. He had been working under the supervision of Head of the Department, Dr. Shridhar. He had been marking his attendance through biometric. It was denied by him that he had not been appointed by the respondent, but by Ajay Kumar, Contractor.

13. In order to rebut the case of the petitioner, the respondent has examined Shri Ajay Singhal, Registrar of the respondent as (RW-1), who tendered in evidence his sworn affidavit Ex. RW-1/A, wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of appointment letter of the petitioner as Ex. RW-1/B, copy of identity card of the petitioner as Ex. RW-1/C and copies of release of salaries for the months of November and December 2016 as Mark RX-1 and RX-2.

14. In cross-examination, he admitted that no show cause notice or chargesheet was served upon the petitioner. He denied that no office or supervisor of the contractor is there in their institution. He also denied that the over all supervision and control of the petitioner was with the respondent.

15. This is the entire oral as well as documentary evidence adduced from the side of the parties.

16. Shri J.C Bhardwaj, AR for the petitioner has contended with vehemence that the petitioner is squarely covered under the definition of "*workman"* in the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The petitioner was engaged as an attendant by the respondent and his services have been terminated illegally without complying with the provisions of the Act, as no notice or compensation was paid to him. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed.

17. *Per contra*, Ms. Deepa Suman, learned vice Counsel for the respondent urged that the the present claim petition is not maintainable as the respondent being an educational institution does not fall within the ambit of the Act. She further argued that the petitioner was not engaged by the respondent, but was an employee of the contractor. The services of the petitioner had never been terminated by the respondent, but he himself had abandoned the job without any intimation. It is, therefore, prayed that the claim petition may kindly be dismissed.

18. I have given a considerable thought to the submissions made for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act in play in the instant case.

The Industrial Disputes Act, 1947, is:

"An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".

Section 2(s) defines a Workman as:

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

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

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

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

iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]"

Section 2(oo) lays down the concept of retrenchment as:

"***Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—***

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

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

(c) termination of the service of a workman on the ground of continued ill-health"

20. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

"***..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which***

have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

21. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

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

22. A perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provision itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" at least for the purposes of this Act.

23. It is the claim of the petitioner that he was an employee of respondent, whereas the

stand of the respondent is that he was the employee of the contractor.

24. At this stage, it is necessary to refer to the provisions of Sections 7 & 12 of the Contract Labour (Regulation and Abolition) Act, 1970. Section 7 of the same reads as under:-

"***7. Registration of certain establishment***.—

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering office: in the prescribed manner for registration of the establishment……"

Section 12 of the same reads as under:—

" *12.* ***Licensing of contractors***.—

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and accordance with a licence issued in that behalf by the licensing officer……"

25. A bare perusal of the above two statutory provisions demonstrates that the establishment can be registered under the Act by following the provisions of Section 7 of the Act and similarly, a contractor can be granted licence under the Act in terms of the provisions of Section 12 thereof.

26. In the present case, it is an admitted position that neither the respondent was registered under the Act with the appropriate Authority nor the alleged contractor was possessing the licence to engage contract labour in terms of the Act. Nowhere, it has been pleaded nor any evidence has been led on record by the respondent that it had a certificate of registration from the prescribed authority and secondly, the contractor had a licence issued by the competent authority to deploy contract labour.

27. In case titled as "***International Airport Authority of India Vs. International Air Cargo Workers Union and another, (2009) 13 SCC*** *374"* it has been laid down by the Hon'ble Supreme Court that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from the service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. A similar view has been taken by the Hon'ble Supreme Court in case titled "***Workmen of Nilgiri Cooperating Marketing Society Ltd. Vs. State of Tamilnadu, AIR 2004 SC 1639***".

28. From the case law cited hereinabove and from the pleadings and evidence on record, it can safely be concluded that the petitioner is an employee of the respondent and there exists a relationship of employee and employer between them. It is evident from the record that the petitioner had been working under the control and supervision of the respondent. There is not an iota of evidence on record to show that Shri Ajay Kumar, the alleged contractor had been giving any directions regarding the work to be carried out by the workman. There is nothing on record to show that either the contractor or his representative ever remained present to give instructions to

the workman actually working in the premises of the respondent. There is no evidence on record to suggest that the contractor had been visiting the respondent to supervise the work of the petitioner. Then, the petitioner has filed a certificate (Ex. PW-1/C), which has been issued by the authorized signatory of the respondent, which demonstrates that the petitioner had been working as an attendant in the department of TB and Chest OPD. It has specifically been stated by PW-1 Dinesh Kumar in his evidence that he had been engaged and had worked as an attendant with the respondent. He while under cross-examination was specific that he had been receiving the salary in his account and that he had been marking his attendance in the biometric system.

29. Though, the witness examined by the respondent as RW-1 Ajay Singhal maintained that the petitioner was an employee of the contractor and to demonstrate it has placed on record appointment letter Ex. RW-1/B, Identity Card Ex. RW-1/C and release of salary for two months (Mark RX-1 and Mark RX-2), but it is my humble opinion that the self-serving testimony of this witness cannot be taken as a gospel truth and the aforesaid documents placed on record by him cannot be looked into for the simple reason that they have not been proved in accordance with law, being only photocopies and their originals having not been produced in the Court. Then, the author of these documents, namely, Shri Ajay Kumar was not produced as a witness by the respondent for the reasons best known to it. There is no other evidence on record to suggest that the petitioner had been engaged by the contractor and that the salary/wages was only being paid to him by the contractor.

30. At the risk of repetition, as neither the respondent was having a certificate of registration in terms of the above mentioned law nor the contractor had a licence in terms thereof, and in view of the judgment of the ***Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and Other, AIR 1999 SC 1160***, once the so called contractor was not a licenced contractor under the Act, the inevitable conclusion is that the contract system was a mere camouflage which could easily be pierced and the real contractual relationship between the principal employer on the one hand and the employee on the other hand, can be visualized. That being the case, the very basis of the claim of the respondent stands eroded, for the reasons that the respondent, otherwise also, cannot be permitted to deny the rights of a workman or contest the claim of the worker on the grounds which are in violation of the law of the land.

31. Therefore, in the absence of the contractor who as per the respondent had allegedly engaged the workman being registered under the provision of Contract Labour Act and in the absence of the respondent being registered as an Establishment under the provisions of Contract Labour Act and in view of the law laid down by the Hon'ble Supreme Court in "***Steel authority of India Ltd., and Others Vs. National Union Waterfront Workers and ors., (2001) 7 SCC 1"*** , the petitioner has to be treated as an employee of the principal employer, that is the respondent.

32. It has been established on record by the petitioner that he had been in continuous service for a long time and definitely for more than a year. As per the petitioner, he had worked as an attendant with the respondent continuously from July, 2014 till 8.4.2017, when thereafter, he was not allowed to resume his duties by the respondent. So, it can safely be held that the petitioner had completed more than 240 days in twelve calendar months preceding his termination.

33. The respondent, however, has taken the plea that the petitioner had abandoned the job. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. It has been laid down by the Hon'ble Supreme Court in ***G.T Lad and ors. Vs. Chemicals and Fibers India Ltd., AIR 1979 SC 582*** that the finding of abandonment is a fact and the same has to be substantiated by leading evidence. In ***Eagle Hunter Solutions Ltd., Vs. Shri Prem Chand, 2019 (160) FLR 16***, it has been held by the Hon'ble Dehli High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. It has been held by the Hon'ble

Supreme Court in ***2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** that when a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls. It was further held that the principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

> ***"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."***

34. There is nothing on record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged wilful absence from duty**.** Shri Ajay Singhal (RW-1) clearly admitted in his cross-examination that no show cause notice or chargesheet was ever served upon the petitioner**.**

35. Even otherwise, the stand taken by the petitioner is that he had remained seriously ill and was on medical rest. He has placed on record medical certificate (Ex. PW-1/B) issued by the Medical Officer Incharge (Senior Resident) Department of Orthopedics, of respondent hospital**,** wherein it has been specifically mentioned that the petitioner remained under treatment from 27.02.2017 to 09.03.2017 and thereafter w.e.f. 10.03.2017 to 6.04.2017, he was advised rest for four weeks**.** The medical certificate Ex. PW-1/B has not been disputed by the respondent. So, it is clear from the ocular and documentary evidence led on record by the petitioner that he had not abandoned the job. Therefore, the plea of abandonment put forth by the respondent/employer is not established**.**

36. Now, adverting to the other aspect of the case**.** The learned counsel for the petitioner next contended that the persons junior to the petitioner are still working and after his termination, new hands were also recruited in his place, as such there is a breach of Sections 25-G and 25-H of the Act. It has been held by the Hon'ble Supreme Court in a series of judgments that it is not necessary for the workman to complete 240 days during preceding twelve calendar months for taking the benefits of Section 25-G and 25-H of the Act. In case titled as ***Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192***, it was held by the Hon'ble Apex

Court that for attracting the applicability of Sections 25 G and 25-H of the Act, the workman is not required to prove that he had worked for a period of 240 days during the twelve calendar months preceding the termination of his services and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason. In the present case the respondent has duly admitted in its reply and evidence that the duties of petitioner were assigned to some other employee by the respondent, as no prudent employer would be expected to let the post/duty lie vacant in absence of employee leaving the job without any intimation. Therefore, from the above such admission on the part of the respondent, I have no hesitation in coming to the conclusion that after the termination of the services of the petitioner the respondent has engaged fresh hand in his place, whereas no notice was given to the petitioner at any point of time to show that he was called by the respondent for employment before the engagement of new hand and as such the termination of services of the petitioner by the respondent without complying with the provisions of Section 25-H of the Act, is improper and unjustified as the respondent has violated the principle of "first come last go" thereby violating the provisions of Section 25-H of the Act.

37. It is also the case of the petitioner that after his alleged disengagement, his juniors had been retained by the respondent in violation of the provisions of Section 25-G of the Act, but to substantiate his such plea there is no cogent and convincing evidence on record. Hence, the provisions of Section 25-G of the Act are not attracted in this case.

38. The petitioner as per his pleadings has claimed full back-wages. As PW-1, the petitioner claimed that from the date of his illegal termination, he has remained unemployed. His such testimony has remained un-challenged in the cross-examination. He was neither cross-examined nor any suggestion was put to him that he was gainfully employed and was getting wages equal to the wages he was drawing from the respondent.

39. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324***, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

40. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then it had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of services. Since, in the case in hand, the petitioner has shown that he was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. Neither, it has been pleaded nor any grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of his illegal termination *i.e*. 08.04.2017 till his reinstatement at the rate of minimum wages, as notified by the State Government from time to time from April, 2017 onwards. Therefore, issue no.1 is answered in the affirmative and in favour of the petitioner while issues no. 3 & 5 are answered in the negative and against the respondent.

ISSUE NO. 2

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

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

ISSUE NO. 4

42. In support of this issue, a plea has been taken by the respondent that the petitioner was the employee of contractor. However, there is no iota of evidence on record which could remotely suggest that the efforts were put in by the respondent to array the contractor as a party before this Court. Moreover, keeping in view my detailed discussion under issues no. 1, 3 and 5 above, the petitioner has been held to be the employee of the respondent, hence, this issue is answered in the negative and against the respondent.

RELIEF

43. As a sequel to my above discussion and findings on issues no. 1 to 5 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th Day of January, 2024.

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

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

Reference Number : 175 of 2018

Instituted on : 05.10.2018

Decided on : 20.01.2024

Padam Kumar s/o Shri Dil Bahadur, r/o V.P.O. Sultanpur, Tehsil & District Solan, H.P.
. . *Petitioner*.

Versus

The Registrar, Maharishi Markendeshwar Medical College & Hospital, Village Lado, P.O. Sultanpur, Tehsil & 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 : Ms. Deepa Suman, Advocate

AWARD

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

"**Whether termination of the services of Shri Padam Kumar s/o Shri Dil Bahadur, r/o V.P.O. Sultanpur, Tehsil & District Solan, H.P. by the Registrar, Maharishi Markendeshwar Medical College & Hospital, Village Lado, PO Sultanpur, Tehsil & District Solan, H.P. w.e.f. 21.03.2017, without complying with the provisions of Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back-wages, re-instatement, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/ management?"**

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as a security guard and had commenced his service carrier with the respondent during the month of October, 2012**.** He had performed his duty with sincerity and honesty and had continued serving the respondent till his oral illegal termination on 21.03.2017. He had been illegally restrained from attending his duties. He had proceeded on leave on 07.03.2017, as his mother had passed away and when he had reported back on duty on 21.03.2017, he was not allowed to join by the respondent and his services were terminated without any notice, retrenchment compensation and that too without necessary compliance of Section 25-F of the Act. The termination/dismissal orders are not speaking orders and the refusal of work on 21.03.2017 amounts to unfair labour practice, as the petitioner was punished for unknown reasons. He had not been served with any show cause notice. No inquiry had been conducted in accordance with law of natural justice and no opportunity had ever been afforded to explain his position. His termination is duly covered under Section 2(oo) of the Act. Workmen junior to him have been retained and new workers have also been engaged, thereby violating the provisions of Sections 25-G & 25-H of the Act. He had worked for more than 240 days in a calendar year preceding his termination. The action of the respondent in terminating the services of the petitioner is biased, unfair and unreasonable as the same had been taken by adopting the policy of "hire and fire". His sudden removal from the employment has made his integrity doubtful in the eyes of one and all. He is unemployed. He, thus, has prayed that his termination be declared illegal and unjustified and he be ordered to be reinstated with full back-wages, seniority and other consequential service benefits throughout with costs.

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

4. The petition was contested by the respondent taking preliminary objections regarding lack of maintainability, having not approached the Court with clean hands, the claim being filed on frivolous grounds, cause of action, the petitioner being not a workman, the claim being bad for non-joinder of necessary parties, the respondent not being an "industry", the petitioner being a contractual employee and that there exists no industrial dispute. On merits, it is alleged that the petitioner was never appointed directly by the respondent, but he was an outsourced contractual employee, employed through the contractor. He had applied for the post of helper with the contractor and as such he had been appointed vide appointment letter dated 04.02.2016. It is denied that the petitioner was illegally restrained from attending his duties and that he was on leave from

7.3.2017. It is alleged that the petitioner had been found missing from his duty since 7.3.2017, without any intimation or leave. Since, the petitioner had failed to return within a reasonable period, his duties were assigned to some other employee. It is specifically denied that there has been violation of any of the provisions of the Act by the respondent. Hence, it is prayed that the petition be dismissed.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 01.01.2020:

1. Whether the termination of the petitioner *w.e.f.* 08.04.2017 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? If so, what relief the petitioner is entitled to? . . *OPP*.

2. Whether the claim is not maintainable as alleged, if so, its effects thereto? . .*OPR*.

3. Whether the petitioner is not a workman under the provisions of Section 2 (s) of the Industrial Disputes Act, 1947, as alleged, if so, its effect thereto? . . *OPR*.

4. Whether the petition is bad for non-joinder of necessary party as alleged, if so, its effect thereto? . . *OPR*.

5. Whether the claim is not maintainable as the respondent college does not fall under the provisions of Industry as defined in the Act, as alleged, if so, its effect thereto? . . *OPR*.

6. Relief

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

8. Arguments of the learned Authorized Representative for the petitioner and learned Counsel for the respondent heard and records gone through.

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

Issue No. 1	:	Yes. Entitled to re-instatement with seniority and continuity with full back-wages.
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Relief	:	Reference is answered in the affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1, 3 & 5.

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

11. In support of his case, Shri Padam Kumar (petitioner) stepped into the witness box as PW-1**.** In his affidavit Ex. PW-1/A**,** submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

12. In cross-examination, he stated that he was appointed in the month of August, 2012. He admitted that the appointment letter dated 4.2.2016, is in his name. He specifically denied that he had been engaged by Ajay Contractor. He had been receiving the salary in his own account. His leave was being sanctioned by Mr. Prince. He categorically denied that his salary was credited from the account of Ajay Kumar. It was denied by him that he had not been appointed by the respondent, but by Ajay Kumar, Contractor.

13. Mark PA is the copy of EPF detail and Mark PB is the copy of statement of account.

14. In order to rebut the case of the petitioner, the respondent has examined Shri Ajay Singhal, Registrar of the respondent as (RW-1). In his affidavit Ex. RW-1/A**,** submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the reply filed by the respondent.

15. In cross-examination, he denied that the petitioner was on sanctioned leave from 7.3.2017 on account of the death of his mother. He further denied that after 15 days when the petitioner returned back to join his duties, he was not allowed. He also denied that the services of the petitioner were under the overall control and supervision of the concerned department.

16. Ex. RW-1/B is the copy of identity card, Ex. RW-1/C is the copy of appointment letter, Ex. RW1/D is the copy of resume, Mark RX-1 is the copy of Aadhar card, Ex. RW1/E is the copy of compromise, Ex. RW1/F is the copy of show cause notice, Ex. RW1/G is the copy of resume, Ex. RW1/H (4 pages) is the copy of salary statement, Ex. RW1/K (3 pages) is the copy of salary statement for the month of January, Ex. RW-1/K is the copy of salary statement for the month of February, 2017 and Mark RX-2 is the copy of salary statement for the month of November 2016.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C Bhardwaj, AR for the petitioner has contended with vehemence that the petitioner is squarely covered under the definition of "*workman"* in the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The petitioner was engaged as a security supervisor by the respondent and his services have been terminated illegally without complying with the provisions of the Act, as no notice or compensation was paid to him. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed.

19. *Per contra*, Ms. Deepa Suman, learned vice Counsel for the respondent urged that the the present claim petition is not maintainable as the respondent being an educational institution does not fall within the ambit of the Act. She further argued that the petitioner was not engaged by the respondent, but was an employee of the contractor. The services of the petitioner had never been terminated by the respondent, but he himself had abandoned the job without any intimation. It

is, therefore, prayed that the claim petition may kindly be dismissed.

20. I have given a considerable thought to the submissions made for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act in play in the instant case.

The Industrial Disputes Act, 1947, is:

"*An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".*

Section 2(s) defines a Workman as:

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

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

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

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

iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]"

Section 2(oo) lays down the concept of retrenchment as:

"*Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

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

(c) termination of the service of a workman on the ground of continued ill-health"

22. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

> **"..*We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."***

23. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

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

University's multi-form operations."

24. A perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provision itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" at least for the purposes of this Act.

25. It is the claim of the petitioner that he was an employee of respondent, whereas the stand of the respondent is that he was the employee of the contractor.

26. At this stage, it is necessary to refer to the provisions of Sections 7 & 12 of the Contract Labour (Regulation and Abolition) Act, 1970. Section 7 of the same reads as under:—

"***7. Registration of certain establishment.-***

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering office: in the prescribed manner for registration of the establishment……."

Section 12 of the same reads as under:—

" *12.* ***Licensing of contractors****.—*

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and accordance with a licence issued in that behalf by the licensing officer……"

27. A bare perusal of the above two statutory provisions demonstrates that the establishment can be registered under the Act by following the provisions of Section 7 of the Act and similarly, a contractor can be granted licence under the Act in terms of the provisions of Section 12 thereof.

28. In the present case, it is an admitted position that neither the respondent was registered under the Act with the appropriate Authority nor the alleged contractor was possessing the licence to engage contract labour in terms of the Act. Nowhere, it has been pleaded nor any evidence has been led on record by the respondent that it had a certificate of registration from the prescribed authority and secondly, the contractor had a licence issued by the competent authority to deploy contract labour.

29. In case titled as "***International Airport Authority of India Vs. International Air Cargo Workers Union and another, (2009) 13 SCC*** *374*" it has been laid down by the Hon'ble Supreme Court that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from the service or

initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. A similar view has been taken by the Hon'ble Supreme Court in case titled "***Workmen of Nilgiri Cooperating Marketing Society Ltd. Vs. State of Tamilnadu, AIR 2004 SC 1639***".

30. From the case law cited hereinabove and from the pleadings and evidence on record, it can safely be concluded that the petitioner is an employee of the respondent and there exists a relationship of employee and employer between them. It is evident from the record that the petitioner had been working under the control and supervision of the respondent. There is not an iota of evidence on record to show that Shri Ajay Kumar, the alleged contractor had been giving any directions regarding the work to be carried out by the workman. There is nothing on record to show that either the contractor or his representative ever remained present to give instructions to the workman actually working in the premises of the respondent. There is no evidence on record to suggest that the contractor had been visiting the respondent to supervise the work of the petitioner. It has specifically been stated by PW-1 Padam Kumar in his evidence that he had been engaged and had worked as a security guard with the respondent. He while under cross-examination was specific that he had been receiving the salary in his account and that he had been marking his attendance in the biometric system. His leave was also being sanctioned by Mr. Prince.

31. Though, the witness examined by the respondent as RW-1 Ajay Singhal maintained that the petitioner was an employee of the contractor and to demonstrate it has placed on record identity card of Padam issued by contractor Ajay Kumar as Ex. RW-1/B, copy of appointment letter as Ex. RW-1/C, copy of resume Ex. RW1/G, copy of salary statement as Ex. RW1/H (4 pages), copy of salary statement for the month of January as Ex. RW1/K (3 pages), copy of salary statement of November 2016 as Mark RX-2, but it is my humble opinion that the self-serving testimony of this witness cannot be taken as a gospel truth and the aforesaid documents placed on record by him cannot be looked into for the simple reason that they have not been proved in accordance with law, being only photocopies and their originals having not been produced in the Court. Then, the author of the documents Ex. RW-1/B and Ex. RW-1/C, Ex. RW-1/H, Ex. RW-1/J, Ex. RW-1/K and Mark RX-2, was not produced as a witness by the respondent for the reasons best known to it. Then, nothing has been produced to remotely show that the salary of the petitioner was being disbursed through the contractor. There is no other evidence on record to suggest that the petitioner had been engaged by the contractor and that the salary/wages was only being paid to him by the contractor.

32. At the risk of repetition, as neither the respondent was having a certificate of registration in terms of the above mentioned law nor the contractor had a license in terms thereof, and in view of the judgment of the ***Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and Other, AIR 1999 SC 1160***, once the so called contractor was not a licenced contractor under the Act, the inevitable conclusion is that the contract system was a mere camouflage which could easily be pierced and the real contractual relationship between the principal employer on the one hand and the employee on the other hand, can be visualized. That being the case, the very basis of the claim of the respondent stands eroded, for the reasons that the respondent, otherwise also, cannot be permitted to deny the rights of a workman or contest the claim of the worker on the grounds which are in violation of the law of the land.

33. Therefore, in the absence of the contractor who as per the respondent had allegedly engaged the workman being registered under the provision of Contract Labour Act and in the absence of the respondent being registered as an Establishment under the provisions of Contract Labour Act and in view of the law laid down by the Hon'ble Supreme Court in "***Steel authority of India Ltd., and Others Vs. National Union Waterfront Workers and ors., (2001) 7 SCC 1"*** , the petitioner has to be treated as an employee of the principal employer, that is the respondent.

34. It has been established on record by the petitioner that he had been in continuous service for a long time and definitely for more than a year. As per the petitioner, he had worked as a security guard with the respondent continuously from October, 2012 till 21.03.2017, when thereafter, he was not allowed to resume his duties by the respondent. So, it can safely be held that the petitioner had completed more than 240 days in twelve calendar months preceding his termination.

35. The respondent, however, has taken the plea that the petitioner had abandoned the job. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. It has been laid down by the Hon'ble Supreme Court in ***G.T Lad and ors. Vs. Chemicals and Fibers India Ltd., AIR 1979 SC 582*** that the finding of abandonment is a fact and the same has to be substantiated by leading evidence. In ***Eagle Hunter Solutions Ltd., Vs. Shri Prem Chand, 2019 (160) FLR 16***, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. It has been held by the Hon'ble Supreme Court in ***2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** that when a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls. It was further held that the principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

> ***"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."***

36. There is nothing on record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged wilful absence from duty**.** Therefore, the plea of abandonment put forth by the respondent/employer is not established.

37. Now, adverting to the other aspect of the case**.** The learned counsel for the petitioner next contended that the persons junior to the petitioner are still working and after his termination, new hands were also recruited in his place, as such there is a breach of Sections 25-G and 25-H of

the Act. It has been held by the Hon'ble Supreme Court in a series of judgments that it is not necessary for the workman to complete 240 days during preceding twelve calendar months for taking the benefits of Section 25-G and 25-H of the Act. In case titled as ***Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192***, it was held by the Hon'ble Apex Court that for attracting the applicability of Sections 25G and 25 H of the Act, the workman is not required to prove that he had worked for a period of 240 days during the twelve calendar months preceding the termination of his services and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason. In the present case the respondent has duly admitted in its reply and evidence that the duties of petitioner were assigned to some other employee. Therefore, from the above such admission on the part of the respondent, I have no hesitation in coming to the conclusion that after the termination of the services of the petitioner the respondent has engaged fresh hand in his place, whereas no notice was given to the petitioner at any point of time to show that he was called by the respondent for employment before the engagement of new hand and as such the termination of services of the petitioner by the respondent without complying with the provisions of Section 25-H of the Act, is improper and unjustified as the respondent has violated the principle of "first come last go" thereby violating the provisions of Section 25-H of the Act.

38. It is also the case of the petitioner that after his alleged disengagement, his juniors had been retained by the respondent in violation of the provisions of Section 25-G of the Act, but to substantiate his such plea there is no cogent and convincing evidence on record. Hence, the provisions of Section 25-G of the Act are not attracted in this case.

39. The petitioner as per his pleadings has claimed full back-wages. As PW-1, the petitioner claimed that from the date of his illegal termination, he has remained unemployed. His such testimony has remained un-challenged in his cross-examination.

40. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324***, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

41. In ***Cargo Motors (Gujrat) Limited Vs. Kritikant Shivajirav Jadav, Letters Patent Appeal No. 1512 of 2019 decided on 07.08.2023***, it has been held by the Hon'ble High Court of Gujrat at Ahemdabad that it is settled law that in a case of termination of employment, though award of back-wages is not automatic with the award of reinstatement, but in case the fault is found on the part of the employer, 100% wages can be provided. The fundamental principle is that no one can take benefit of its own wrong.

42. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then it had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of services. Since, in the case in hand, the petitioner has shown that he was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. Neither, it has been pleaded nor any grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. RW-1 Shri Ajay Singhal while under cross-examination was categorical that no document has been placed on record to show that the petitioner was gainfully employed.

43. The learned counsel for the respondent has placed reliance upon the cases titled as ***Sonal Garments Vs. Trimbak Shankar Karve, 2002 (6) Bom CR 529 and Raju Shankar Poojary Vs. Chembur Warehouse Company etc., 2004 (1) Bom CR 160,*** to contend that the petitioner is not entitled to full back-wages. In view of my discussion above and the law laid down by the Hon'ble Supreme Court in ***Deepali Gundu Surwase's*** case (supra), the respondent cannot derive any advantage from what has been laid down in the aforementioned case law cited by him. Even otherwise, in both those cases as the employer in the written statement had offered the workman to resume his duties, it was held that the award of full back wages was not correct. However, in the case in hand no such offer has ever been made in the reply by the respondent to the petitioner.

44. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of his illegal termination i.e 21.03.2017 till his reinstatement at the rate of minimum wages, as notified by the State Government from time to time from April, 2017 onwards. Therefore, issue no.1 is answered in the affirmative and in favour of the petitioner while issues no. 3 & 5 are answered in the negative and against the respondent.

ISSUE NO. 2

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

ISSUE NO. 4

46. In support of this issue, a plea has been taken by the respondent that the petitioner was the employee of contractor. However, there is not an iota of evidence on record which could remotely suggest that efforts were put in by the respondent to array the contractor as a party before this Court. Moreover, keeping in view my detailed discussion under issues no. 1, 3 and 5 above, as the petitioner has been held to be an employee of respondent, therefore, this issue is answered in the negative and against the respondent.

RELIEF

47. As a sequel to my above discussion and findings on issues no. 1 to 5 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent to the petitioner within a period of three months from the date of publication of the award, failing which, the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. Let a copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th Day of January, 2024.

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

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

Reference Number : 62 of 2015

Instituted on : 06.10.2015

Decided on : 23.01.2024

Rupinder Singh, s/o Late Shri Daya Nand, r/o village Manju, P.O. Baldyan, Tehsil & District Shimla, H.P. . . *Petitioner*.

Versus

The Executive Engineer, I & PH Division No.- 2, Shimla, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Hitender Thakur, Advocate

For the Respondent : Shri Manoj Sharma, ADA

AWARD

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

"**Whether termination of the services of Rupinder Singh, s/o Late Shri Daya Nand, r/o Village Manju, P.O. Baldyan, Tehsil & District Shimla, H.P. by The Executive Engineer, I & PH Division No.-2, Tehsil & District Shimla w.e.f. 30.11.1998 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a beldar on daily wage basis by the respondents in the month of September, 1998 and had continued to work till the month of November, 1999, when he was illegally retrenched from service, thus violating the provisions of Section 25-F of the Act. The petitioner thereafter had approached the respondents time and again to reengage him, but without success. Forty three new persons were engaged by the respondents in Sub Division Gumma and other Sub Divisions falling under Division No.2, Tutikandi Shimla. When the request of the petitioner to reengage him was not accepted by the respondent, demand notice dated 23.9.2009 had been served. However, the said notice was rejected by the Labour Commissioner on the ground of delay and laches. When challenged before the Hon'ble High Court, the order of Labour Commissioner was quashed and the present reference was sent to this Court for adjudication. As such, the petitioner has challenged his termination.

3. Be it recorded here at the very outset that as per the reference received from the appropriate Government, only Executive Engineer, I&PH Division No. 2, Tehsil & District Shimla was arrayed as a respondent. However, on an application preferred under Order 1 Rule 10 of the

Code of Civil Procedure by the petitioner, Jal Prabandhan Nigam Ltd., through its CEO US Club, Shimla H.P. was impleaded as respondent no. 2.

4. On notice, the respondents appeared. Respondent no.1 only filed the reply. It was adopted for respondent no.2, as per the statement of the learned Counsel recorded on 8.6.2022, which is placed on the file.

5. The petition was contested raising preliminary objections regarding lack of maintainability and that as the petitioner had been engaged for doing specific petty repair works, the engagement would automatically come to an end on completion of such works. On merits, it was admitted that the petitioner had been engaged on daily wages on 10.09.1998. However, it was alleged that he had been engaged for doing petty repair works of pipe lines and cleaning of sedimentation of water tank, with a clear understanding that his engagement would automatically come to an end on the completion of the work. The petitioner had only worked for 80 days and on completion of the work, his engagement had come to an end. The provisions of Section 25-F of the Act, as such are not applicable. It is specifically denied that the services of the petitioner had illegally been terminated. He had remained silent for years together and had only raised the demand notice in the year 2009, after a lapse of about 11 years. No persons junior to the petitioner have been retained for carrying out the specific work. The persons mentioned by the petitioner are senior to him and some had been transferred from other divisions. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

6. No rejoinder was filed.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 09.11.2022

1. Whether the termination of the service of petitioner *w.e.f.* 30.11.1998 without complying with the provisions of the Industrial Dispute 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*.

3. Relief

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

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

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

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

REASONS FOR FINDINGS

ISSUE NO.1

11. The petitioner, namely, Rupender Lal examined himself as Ex. PW-1 and filed his affidavit in his evidence, which is exhibited as Ex. PW-1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain document purportedly in support of his claim, which are Mark PX-1 to Mark PX-4.

12. In the cross-examination, he admitted that he was engaged from 10.09.1998 to 30.09.1998. He denied that he had only worked for 80 days in the year 1998. He further denied that he had been engaged for doing petty repair works and that his services were deemed to have been termination on completion of such works. He specifically denied that he had not completed 240 working days in a calendar year. It was also denied that no junior to him was engaged.

13. Conversely, Shri Basant Singh Rathour, Executive Engineer, Jal Shakti Division Kasumpati, District Shimla (respondent no.1) testified as RW-1. In his affidavit Ex. RW-1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent no. 1.

14. In cross-examination, he admitted that he was not having any personal knowledge as to for what purpose the petitioner had been engaged by the department. Volunteered that, as per the record he had been posted as beldar at Gumma Sub Division. He admitted that he has not seen any mandays chart or muster roll pertaining to the petitioner on record. He feigned ignorance that junior workers to the petitioner had been retained by the department. He categorically denied that the services of the petitioner had illegally been terminated by the department in November, 1999.

15. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in September, 1998 and that he had worked as such till the month of November, 1999. The respondents and in particular, respondent no.1, has taken the stand that the petitioner had been engaged on daily wage basis just to do petty works and his engagement was to come to an end on the completion of such petty works. Although, the petitioner while under cross-examination categorically denied that he had been engaged just to do petty works by the department and that his engagement automatically came to an end on the completion of such works, but he had to admit that he was engaged from 10.9.1998 to 30.9.1998. It being so, the very basis of the claim of the petitioner stands eroded.

16. Now comes the question as to whether on 30.11.1998, the services of the petitioner were finally terminated by the respondents or not?

17. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated on 30.11.1998. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondents in the month of November, 1999. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondents in November, 1999. Such pleadings and evidence of the petitioner cannot be looked into, being beyond the terms of the reference. Strangely enough, it was also suggested to RW-1 Shri Basant Singh Rathour by the petitioner that his services stood terminated by the department in November, 1999. Although, this witness denied the suggestion, but the putting of this suggestion by the petitioner leaves no doubt in mind that he

admits that his services had been so terminated in the month of November, 1999 only. Since, it has neither been pleaded, nor stated by the petitioner and even no such suggestion has been put to the witness of the respondents that his services stood terminated by the department on 30.11.1998, therefore, the question of final termination of his services by the respondents (as per the reference) does not arise. Rather, the same has become insignificant.

18. Such being the situation, I have no hesitation to conclude that the services of the petitioner were not finally terminated by the respondents on 30.11.1998. He is not entitled to any relief.

19. Issue no.1 is accordingly answered in the negative and is decided against the petitioner.

ISSUE NO. 2

20. Taking into account my findings on issue no.1 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is accordingly answered in the affirmative and decided in favour of the respondents.

RELIEF

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

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

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

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

Ref. Number : 159 of 2020

Instituted on : 13.08.2020

Decided on : 23.01.2024

Brij Lal, s/o Late Shri Trikhu Ram, Village Matasha, P.O. Jharag, Tehsil Jubbal, District Shimla, H.P. . . *Petitioner*.

Versus

1. The Director, Atal Bihari Vajpayee Institute of Mountaineering & Allied Sports, Manali, District Kullu, H.P.

2. The Incharge, Regional Adventure Sports Centre, Atal Bihari Vajpayee Institute of Mountaineering & Allied Sports Hatkoti, Tehsil Jubbal District Shimla, H.P. . . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Chetan Sharma, Advocate

For the Respondents : Shri Manoj Sharma, ADA

AWARD

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

"**Whether termination of the services of Shri Brij Lal, s/o Late Shri Trikhu Ram, Village Matasha, P.O. Jharag, Tehsil Jubbal, District Shimla, H.P. by the (i) The Director, Atal Bihari Vajpayee Institute of Mountaineering & Allied Sports, Manali, District Kullu, H.P. (ii) Incharge, Regional Adventure Sports Centre (Atal Bihari Vajpayee Institute of Mountaineering & Allied Sports, Hatkoti, Tehsil Jubbal, District Shimla, w.e.f. 01.10.2018, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including re-instatement, amount of back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employers?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a daily wage clerk w.e.f. 4.4.2003 by respondent no. 1. He had worked continuously with the respondents till 30.09.2018 and thereafter *w.e.f.* 01.10.2018 his services had been terminated orally without assigning any reason and without complying with the mandatory provisions of the Act. Before terminating his services, neither any notice had been issued nor any retrenchment compensation had been paid. He had completed more than 240 days in each calendar year. Juniors to him S/Shri Rajkumar, Chaman Lal, Bhim Singh, Mansukh Gopal, Jai Dev, Hem Raj and Anil Kumar are still working with the respondents. Even, a new workman Shri Vino Kumar has been engaged by the respondents. The work, which he had been performing since the year 2003, is still available. He had requested the respondents to re-engage him, but of no avail. It is, thus, prayed that the claim petition filed by him be allowed and the respondents be directed to reinstate him along-with full back-wages, seniority and continuity.

3. On notice, the respondents appeared and filed a joint reply.

4. The petition was contested by the respondents by alleging that the petitioner had been engaged as a clerk *w.e.f.* 4.3.2003 for temporary/part time basis. He had never worked continuously with the respondents till 2009. Initially he was engaged, only when his services were required. His services had never been terminated and as per the latest policy, he was re-engaged and his services have been regularized. As the petitioner had been working on temporary basis, no notice was given to him. No juniors have been regularized earlier to the petitioner. The persons named by the petitioner have been engaged in different categories and the new workman Shri Vinod Kumar has been engaged as a daily waged cook w.e.f. May, 2019. The petitioner had worked intermittently till 2010 and had never completed five years of continuous service, as required for the purpose of regularization. The respondents have not violated the provisions of Sections 25-F, 25-G and 25-H

of the Act. All the workers at different centers have been engaged through outsource agency. The services of the petitioner were engaged through outsource agency on 1.10.2018 and his services have now been regularized against a vacant post of clerk. Hence, the respondents have prayed for the dismissal of the claim petition.

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

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 19.02.2022

1. Whether the termination of the service of petitioner by the respondent *w.e.f.* 01.10.2018, without complying the provisions of the Industrial Dispute Act, is illegal and unjustified? . . *OPP*.

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

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

4. Relief

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

8. Arguments of the learned Counsel for the parties heard and records gone through. Written arguments on behalf of the petitioner along-with the case law have also been gone through by me.

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

Issue No. 1	:	Yes
Issue No. 2	:	Entitled to all consequential pecuniary benefits post regulation throughout.
Issue No. 3	:	Nos
Relief	:	Reference is answered in the affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

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

11. As per the petitioner, he had been engaged as a daily wage clerk by the respondents and had worked continuously *w.e.f.* 04.04.2003 till 30.09.2018. Thereafter, on 1.10.2018 his services were terminated without following the mandatory provisions of the Act. So, it is claimed that the petitioner is entitled to be re-instated in service by the respondents on the same post and with all service benefits including full back-wages.

12. Per contra, the respondents contended that though the petitioner had worked with the respondents as a clerk, but his services had been engaged through outsource agency on temporary basis. He had worked intermittently till 2010 and had never completed five years of continuous service, as required for the purpose of regularization. His services were re-engaged through outsource agencies on 1.10.2018 and now he has been regularized against a vacant post of clerk. Hence, it is claimed that the petitioner is not entitled to any relief from this Court.

13. In support of his case, Brija Lal (petitioner) stepped into the witness box as PW-1**.** In his affidavit Ex. PW-1/A**,** submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

14. In the cross-examination, he denied that he had been engaged on temporary basis and had not worked continuously from the year 2003 till the year 2009. He also specifically denied that he had not completed 240 working days. It is also denied by him that his services had never been terminated by the respondents. He admitted that he had been engaged through outsource agency in the year 2018. He categorically denied that he had not completed five years of continuous service. He had to admit that he has been regularized in the year 2021. He further denied that his juniors were not regularized. Volunteered that, Ugam Ram who was engaged in the year 2009 was regularized in the year 2015.

15. PW-2 Shri Ugam Ram produced on record the DPC Proceedings, copy of which is Ex. PW-2/A. He testified that he was engaged on 13.07.2009 and was regularized on 9.6.2015. He has also brought on record copies of his office memorandums as Ex. PW-2/B and Ex. PW-2/C.

16. Conversely, the respondents examined Shri Anirudh Chauhan, Incharge Regional Adventure Sports Hatkoti, Shimla, as RW-1. In his affidavit Ex. RW-1/A, preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

17. In cross-examination, he stated that the petitioner was engaged in the year 2003 as a daily waged clerk. He specifically admitted that the post of clerk is a permanent post. He denied that the petitioner had worked continuously from the year 2003 till the year 2018. Volunteered that he had not completed 240 working days from the year 2003 till the year 2009. He had only completed such number of days from the year 2009 till the year 2018. The mandays chart Ex. PV bears his signatures. He admitted the abstracts of cash books as Ex. PW, Ex. PX, Ex. PY and Ex. PZ and details of mandays chart Ex. PZ1. He admitted that Ex. PZ1 and Ex. PV are different. Ugam Ram was engaged in the year 2009 and was regularized in the year 2015. He specifically denied that the petitioner was terminated in the year 2018. He had to admit that no muster roll was issued to the petitioner in the year 2018. Volunteer that, he was engaged on outsource basis. He feigned ignorance that the petitioner is entitled to be regularized with continuity, seniority and consequential benefits from the year 2003.

18. Ex. RW-1/B is the copy of office memorandum dated 1.10.2021, as per which the petitioner was regularized as a clerk against a vacant post.

19. From the record, it transpires that the dispute does not *per se* relate to the termination simplicitor, but to the change of condition of the service of the petitioner, whereby the respondents have claimed that since 1st October, 2018, the services of the petitioner had been engaged through an outsourced agency. Though, technically the action of the respondents in changing the working conditions w.e.f. 01.10.2018 by taking the services of the petitioner through an outsource agency will tantamount to cession of work and as such will however fall within the definition of Section 2(oo) of the Act. The reference could have been more happily worded. None the less, the terms of reference are sufficient to allow this Court to venture into the dispute as raised by the petitioner, the later part of it specifically relating to non-compliance of the provisions of the Act.

20. Admittedly, the petitioner was employed as a daily waged worker and was working on muster roll basis in the year 2003 and he continued working as such till 30.9.2018. The respondents in October, 2018 are stated to have taken the services of the petitioner through an outsourced agency.

21. The defence raised by the respondents was that there was no whole time work available and the petitioner was being engaged temporarily on need basis. The plea of engagement of the petitioner on need basis temporarily has half-heartedly been raised in the pleadings and in fact no cogent evidence has been led in this behalf by the respondents. RW-1 Shri Anirudh Chauhan has merely stated that the petitioner had been engaged as a clerk on temporary basis and that too on part time w.e.f. 04.03.2003 and that he had not worked continuously with the respondents. Apart from his, there is nothing on record to remotely suggest that the petitioner was being engaged on need basis by the respondents. Even otherwise, in the cross-examination he has categorically admitted that the details of mandays along-with muster roll, Ex. PV, bear his signatures. Ex. PV on record is the details of the days of work done by the petitioner since the year, 2003 up till the year 2018. As per this document the petitioner had worked continuously for more than 240 days in each year since the year 2010 up till the year 2017. This witness also admitted that mandays chart Ex. PZ-1 has been issued by the department. A glance at this document would also reveal that since the year 2010 onwards the petitioner had been continuously working with the respondents. The plea of the engagement of the petitioner on need basis by the respondents, thus, cannot be sustained in the eyes of Ex. PV and Ex. PZ-1.

22. Admittedly, the petitioner as per the respondents themselves was working on muster roll basis till September, 2018. He admittedly, had completed more than 240 days in a calendar year. The State was conscious of the fact that any change in the condition of service had to be effected by issuing a notice to the workman regarding the change proposed to be effected, as is the statutory mandate of Section 9-A of the Act. The petitioner already having been in the employment of the respondents on daily wages was protected by the provisions of Section 9-A of the Act. In case, the respondents had to effect any change in the service conditions of the petitioner, they had to fall back upon the statutory provisions of the Act, which admittedly has not been done in the case in hand. The petitioner was neither retrenched nor a notice of change as postulated under the Act was issued by the respondents. In the face of Ex. PV and Ex. PZ-1 on record even the plea of the engagement of the petitioner temporarily on need basis falls to the ground.

23. Not only is the action of the respondents voilative on the aforesaid count, but it also smacks of "unfair labour practice", as defined in Section 2(ra) of the Act, as the action of the respondents tantamounts of abolishing the work of a regular nature being done by the workman and to give such work on outsource basis. The action of the respondents in changing the service conditions of the workman *per se*, was not in good faith and can be termed to be malafide, as has been detailed hereinabove. The change effected by the respondents tantamounts to the infraction of the provisions contained in Fifth Schedule of the Act, vis-a-vis "unfair labour practice".

24. For all the aforesaid reasons discussed hereinabove, this Court is of the considered opinion that the action of the respondents in taking the services of the petitioner on outsource basis w.e.f. 01.10.2018 onwards was indeed voilative of the provisions of the Act, as have been discussed above and thus illegal and unjustified in law.

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

26. It is not disputed that the petitioner stands regularized by the respondents *w.e.f.* 01.10.2021. In this regard, reference can also be made to the copy of office memorandum placed on record by the respondents as Ex. RW-1/B. However, the petitioner as per his statement of claim and evidence has claimed that he had been continuously working with the respondents since 4th April, 2003 till 30th September, 2018.

27. 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. 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.

28. 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 been continuously working with the respondents since April, 2003. But, I am afraid that the petitioner has not been able to establish on record that since April, 2003 and uptill the year 2009, he had been putting in 240 days or more in each calendar year. The details of his work, as shown in Ex. PV and Ex. PZ-1, clearly go to demonstrate that he had not completed the requisite number of days in the aforementioned period i.e from the year 2003 up till the year 2009. Faced with the situation, it was argued with vehemence for the petitioner, both orally as well as through written arguments that there is a variance in both these documents regarding the number of working days having been put in by the petitioner with the respondents. True it is that there is some variation as to the number of working days in both the documents, but there is nothing on record to remotely suggest that the petitioner had put in 240 or more days during the aforementioned period. The number of working days in both the said documents are shown to be too less than the figure of 240.

29. Anyhow, admittedly the petitioner completed more than 240 days from the year 2010 uptill the year 2017, as is evident from documents Ex. PV and Ex. PZ-1, being admitted documents on the part of the respondents. So, it is directed that the petitioner shall be deemed to be the regular employee of the respondents, having been employed on muster roll basis, from the year 2010. He shall be regularized on the completion of requisite number of years counted from the year 2010 as per the policy of the State in vogue and as applicable to the respondents. The claim of the petitioner that Shri Ugam Ram (PW-2) was his junior, appears to be not tenable for the reason that he was appointed on compassionate grounds, as per his testimony and document Ex. PW-2/B.

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

31. Both these issues are decided accordingly.

ISSUE NO. 3

32. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided accordingly.

RELIEF

33. For the foregoing reasons discussed hereinabove supra, the reference is allowed in favour of the petitioner and against the respondents. The action of the respondents in taking the services of the petitioner through outsourced agency w.e.f. 01.10.2018 is held to be illegal, arbitrary and violative of the provisions of the Act. The petitioner will be deemed to have continued as a daily wager on muster roll basis w.e.f. the year 2010. He shall be regularized on the completion of the requisite number of the years counted from the year 2010 as per the policy of the State. He shall also be entitled to all consequential pecuniary benefits post regulation throughout. The reference is answered accordingly. Let a copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

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

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

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

Reference Number : 194 of 2018

Instituted on : 01.12.2018

Decided on : 24.01.2024

Kaku Chaudhary s/o Shri Hari Ram, r/o Village Bagher, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P. . . *Petitioner*.

Versus

The Factory Manager/ General Manager, M/s Mahodar Beverages, Plot No. 81 D-1, EPIP, Phase-1, Jharmajri, District Solan, H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : In person
For the Respondent : Shri Rajiv Sharma, Advocate

AWARD

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

"**Whether termination of services of Shri Kaku Chaudhary s/o Shri Hari Ram, r/o Village Bagher, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P. by the Factory Manager/ General Manager, M/s Mahodar Beverages, Plot No. 81 D-1, EPIP, Phase-1, Jharmajri, District Solan-173205 (H.P.) w.e.f. 05.10.2017 without complying 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 employer/ management?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as an accountant by the respondent on 1st July, 2007. He had been performing his duties efficiently and to the satisfaction of the respondent. No complaint was there regarding his work and conduct. When Mr. Gulab Roy had joined as HOD of the Accounts in place of Mr. Shiv Kumar Sharma, he started torturing the petitioner. The company had tried to implicate him in a false case regarding mismatch of accounts and an amount of ` 10,000/- had been deducted from his salary. The petitioner had never remained on cash duty and the aforesaid amount had been transferred to a co-employee. He was then transferred from the accounts branch to the store. On 27.09.2017, he had been asked by Mr. Gulab Roy not to come on duty. When questioned, no reason was assigned to him for being restrained from coming to the company. On 4.10.2017, his services were orally terminated by Mr. Gulab Roy, without notice and without being provided an opportunity of being heard. No formal termination letter had been issued. Since, his illegal termination, he has remained unemployed. He had approached the Labour Officer on 11.10.2017, when he was shown by the management to have been transferred from Baddi to Delhi on 23.10.2017. As such, the petitioner has challenged his termination. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply taking preliminary objections regarding lack of maintainability, that the petitioner has not approached the Court with clean hands, the reference being not a legal one, that the petitioner was not a workman as per the Act and that he was gainfully employed and earning more than what he had been receiving from the respondent. On merits, it was admitted that the petitioner had joined the respondent in the month of July, 2007 and had worked as such uptill 23.10.2017. On the said date he intentionally had abandoned the job. He had failed to report on duty at the transferred place. The dis-obeyance of the transfer order by the petitioner was brought to the notice of the Conciliation Officer, when he had been advised by the Conciliation Officer to join at the transferred place, but all in vain. Disciplinary proceedings had been initiated against the petitioner, when on 24.05.2018 he had disclosed that he was not in a position to serve at Delhi due to some family problems. On his request, the management had decided to keep the petitioner at Jharmajri, but he even did not join there in the store department. Till date, the name of the petitioner has not been removed from the roll of the respondent. It was specifically denied that the petitioner had been implicated in a false case by the officers of the respondent. The case of the petitioner does not fall within the definition of "retrenchment" and the

provisions of Section 25-F of the Act are not attracted. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

4. No rejoinder was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 29.10.2021:

1. Whether the termination of the services of the petitioner without complying with the provisions of the Industrial Dispute Act, 1947 is illegal and unjustified, as alleged? . . *OPP*.

2. If issue no. 1 is proved in affirmative, than what relief the petitioner is entitle to? . . *OPP*.

3. Whether the petition is not maintainable in the present form? . . *OPR*.

4. Relief

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

7. Arguments of the petitioner, who appeared in person and those of the learned Counsel for the respondent heard and records gone through.

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

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

REASONS FOR FINDINGS

ISSUES NO.1 & 2

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

10. The petitioner, namely, Kaku Chaudhary examined himself as Ex. PW-1 and filed his affidavit in his evidence, which is exhibited as Ex. PW-1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are Mark P-1 to Mark P-15.

11. In the cross-examination, he admitted that he was transferred to Delhi vide transfer order dated 23.10.2017, Ex. R-1. He denied that he had not joined his duty at the transferred place. Volunteered that, he was not allowed to enter the premises of the respondent. He admitted his

signatures on the conciliation proceedings, Ex. R-2. It is also admitted by him that he had been asked to join in the stores department at Baddi. He also clearly admitted that before the Labour Officer, he had stated that he did not want to join in the stores department and that his demand notice be sent to the Labour Commissioner.

12. Conversely, Shri Rajesh Dubey, Factory Manager of the respondent testified as RW-1. In his affidavit Ex. RW-1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

13. In cross-examination, he stated that the petitioner had been working in the accounts department of the company. He admitted that the petitioner had been transferred to Delhi. He denied that the petitioner was not allowed to join there. Volunteered that, he had not reported for duty there. He admitted that no letter for absence from duty had been issued. It was denied that the petitioner had reported at Jharmajri, but was not allowed to join there.

14. Ex. RX is the signature of this witness on photocopy of reply to the demand notice, Ex. RW-2/B.

15. Ex. RX-1 is also the signature of this witness on photocopy of reply to the demand notice, Ex. RW-2/C.

16. Ex. RX-2 is the photocopy of cahrgesheet dated 28.10.2018.

17. Ex. RX-3 is the copy of letter with respect to the transfer order dated 23.10.2017.

18. Ex. RX-4 and Ex. RX-5 are the copies of mandays chart pertaining to the petitioner.

19. RW-2 Shri Sukhbir Singh, brought the requisitioned record. He proved on record the copy of detailed report under Section 12(4) of the Act as Ex. RW-2/A and copies of replies to the demand notice as Ex. RW-2/B and RW-2/C.

20. Shri Raj Kumar, Manager HR of the respondent testified as RW-3. In his affidavit Ex. RW-3/A, preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the defence of the respondent. He also placed on record documents in support of the respondent, which are exhibited as Ex. RW-3/B to Ex. RW-3/D.

21. In the cross-examination, he admitted that the petitioner had been working in the accounts department of the company w.e.f. 01.10.2016. He admitted that the petitioner had been transferred to Delhi. He denied that the petitioner had reported to join at the transferred place, but he was told that his services were not required. The petitioner had worked in the store department for 2-3 days. He specifically denied that on 4.10.2017, the petitioner had been asked not to report on duty. The full & final amount prepared by the respondent during the conciliation proceedings was not accepted by the petitioner.

22. Admittedly, the petitioner was employed as an accountant by the respondent in the month of July, 2007 and he continued working as such till the month of October, 2017. The petitioner has tried to portray that his services had orally and illegally been terminated by the respondent on 04.10.2017. However, the stand taken by the respondent is that the services of the petitioner had never been terminated, rather he had been transferred to Delhi vide transfer order dated 23.10.2017. The petitioner had not joined there and had abandoned the job.

23. Now comes the question as to whether on 05.10.2017, the services of the petitioner were finally terminated by the respondent or not?

24. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated on 05.10.2017. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent on 04.10.2017. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent on 04.10.2017. Such pleadings and evidence of the petitioner cannot be looked into, being beyond the terms of the reference. Since, it has neither been pleaded nor stated by the petitioner that his services stood terminated by the respondent on 05.10.2017, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant. Then, while under cross-examination, the petitioner was categorical that he had been transferred to Delhi vide order dated 23.10.2017 (Ex. R-1). That being the case, the very basis of the claim of the petitioner stands eroded, for the reason that had the services of the petitioner been terminated on 04.10.2017, as alleged, the respondent/company would not have issued his transfer order subsequently on 23.10.2017. Further, it has been categorically admitted by the petitioner that he had been asked to join his duty in the store department at Baddi. He also clearly admitted that on 14.6.2018, before the Labour Officer he had stated that he did not want to join in the stores department. As per the mandays chart (Ex. RX-4 and Ex. RX-5), the petitioner is shown to have worked with the respondent till the month of September, 2017. He is only shown to have worked for two days in the month of October, 2017 and thereafter for the months of November and December, 2017 he is not shown to have not worked even for a single day. So, as per the own admission made by the petitioner and in the light of the mandays chart, it is apparent that the petitioner has himself abandoned the job.

25. Such being the situation, I have no hesitation to conclude that the services of the petitioner were not finally terminated by the respondent on 05.10.2017, rather he seems to have himself abandoned the job. He is not entitled to any relief.

26. Issue no.1 is decided accordingly and issued no. 2 is answered in the negative and against the petitioner.

ISSUE NO. 3

27. Taking into account my findings on issues no.1 & 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is accordingly answered in the affirmative and in favour of the respondent.

RELIEF

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

Announced in the open Court today this 24th day of January, 2024.

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

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

Reference Number : 268 of 2020

Instituted on : 08.10.2020

Decided on : 24.01.2024

Pradeep Kumar, s/o Shri Ishwar Singh, r/o Village Batamandi, Tehsil Paonta Sahib, District Sirmour, H.P. . . *Petitioner*.

Versus

1. The Factory Manager, M/s Bajaj Consumers Care Pvt. Ltd. Batamandi, Tehsil, Paonta Sahib, District Sirmour, H.P.

2. Sh. Anil Sharma Prop. M/s Sharma Associates, r/o Sharma Niwas, Near Jannat Bangran Chowk Paonta Sahib, District Sirmour, H.P. . . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Vikas Shayam, Advocate

For the Respondent no. 1 : Shri Ashutosh Bhardwaj, Advocate

For the Respondent no. 2 : Shri Vikas Chauhan, Advocate

AWARD

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

"**Whether termination of the service of Sh. Pradeep Kumar, s/o Shri Ishwar Chand, r/o Village Batamandi, Tehsil Paonta Sahib, District Sirmour, (H.P.) w.e.f. 01.07.2020 by (i) Shri Anil Sharma, Prop. M/s Sharma Associates, r/o Sharma Niwas, Near Jannat Bangran Chowk Paonta Sahib, District Sirmour, H.P. (Contractor), & (ii) The Factory Manager, M/s Bajaj Consumers Care Pvt. Ltd. Batamandi, Tehsil, Paonta Sahib, District Sirmour, H.P. (Principal Employer) without complying with the provisions of the Industrial Dispute Act, 1947, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/ management?"**

2. The case of the petitioner as it emerges from the statement of claim is that he was working as Munshi under the direct control, administratively as well as financially, with respondent no.1 on a consolidated remuneration of ` 12,000/- per month, which was being directly remitted in his bank account. Respondent no. 2 is a contractor with respondent no.1 and he is having no control over the petitioner. The duties have been performed by the petitioner to the satisfaction of all, without there being any complaint. In the month of October, 2019, respondent no.1 had stopped paying the salary to the petitioner. On representation, he was assured by the company that he would be paid the salary from the month of March, 2020. In the month of June, 2020, the petitioner had received his salary @ of ` 12,000/- per month *w.e.f.* October, 2019 till June, 2020 from the company. However, he was not allowed to enter the factory premises. Since, the petitioner was on the regular rolls of respondent no.1 and had spent his nine years for the betterment of the company, his services could not have been retrenched without complying with the provisions of the Act. He had completed 240 days in each calendar year. No notice, as per law was served nor any compensation was paid to the petitioner before retrenching his services, thus being voilative of the provisions of the Labour Laws. No opportunity of being heard was afforded to him and there has been a violation of principles of natural justice. As such, the petitioner has challenged his termination. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondents appeared. Both the respondents have filed separate replies.

4. The petition was contested by respondent no.1 taking preliminary objections regarding lack of maintainability, cause of action, concealment of material facts, the petition being false and frivolous, the petitioner having no right and locus standi to file the petition against respondent no.1, as he is an employee of respondent no.2 and that the petitioner is gainfully employed. On merits, it is admitted that respondent no.2 is a contractor with respondent no.1 and that the petitioner had been working as a Munshi with respondent no.1, but through respondent no.2 on a consolidated remuneration of ` 12,000/- per month, being paid by respondent no.2. The petitioner had never been employed directly by respondent no.1 nor, he was under its direct control and supervision. The salary to the petitioner was being paid by respondent no.2 and he was under his direct control and supervision. It is admitted that the entire dues of the salary and other benefits of the petitioner stand cleared up till June, 2020. The petitioner had never been on the regular rolls of respondent no.1. It is denied that he had worked for more than 240 days in the preceding calendar year and for nine years with respondent no.1. Hence, respondent no.1 has prayed that the petition be dismissed with costs.

5. In the reply, respondent no. 2 took preliminary objections regarding lack of maintainability and that the petitioner had abandoned the job. On merits, it is alleged that the petitioner had been working as a Munshi/supervisor with respondent no. 2 and he had been entrusted the duty to look-after the affairs of providing manpower to respondent no.1 in lieu of the agreement executed in between respondent no. 2 and respondent no. 1. The petitioner was working under the direct control and supervision of respondent no.2 since the year 2014 and he was being duly paid for his services. It is admitted that the petitioner had been performing his duties satisfactorily. However, he had abandoned the job *w.e.f.* October, 2019 without any reason. The services of the petitioner have never been terminated by respondent no. 2. All the dues stand paid to the petitioner. Hence, it is prayed that the petition be dismissed with costs.

6. No rejoinder filed.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 06.09.2022

1. Whether the termination of the service of the petitioner by the respondent management *w.e.f.* 01.07.2020 without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified, if yes, what relief the petitioner is entitled to? . . *OPP*.

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . . *OPR*.
3. Whether the petitioner is not a workman in term of the provisions of Industrial Dispute Act, 1947, as alleged? . . *OPR*.

4. Relief

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court on 20.01.2024, as despite being afforded ample and last opportunity subject to costs, he had failed to lead his evidence. On the said date neither the petitioner nor his counsel had put in appearance despite the case being called several times. Since, no evidence was led on record by the petitioner, the learned counsel appearing for the respondents, as per their statements made at bar, did not intend to lead any evidence for the respondents.

9. Arguments heard and records gone through.

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

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Not pressed

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

REASONS FOR FINDINGS

ISSUE NO.1

11. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by respondent no.1 in the month of July, 2020 by violating the provisions of the Act. It was asserted that the petitioner had been engaged as Munshi in the year 2011 by respondent no.1 and he had continuously worked till June, 2020, when thereafter he was not allowed to enter the factory premises. No notice or retrenchment compensation had been paid to the petitioner. He was not given an opportunity of being heard before his retrenchment. These averments were required to be established on record by the petitioner by way of ocular and / or documentary evidence.

12. It is an admitted case of the parties that the services of the petitioner were engaged as a Munshi. However, the respondents claimed that as per the agreement executed in between them, respondent no.2 had provided the services of the petitioner to respondent no.1.

13. It was contended by the learned Counsel appearing for the respondents that as the petitioner had claimed that he was engaged by respondent no. 1 and that he had been working directly under the control and supervision of such respondent, cogent and reliable evidence was required to be led in this behalf by the petitioner, particularly when it is the defence taken by both the respondents that the petitioner was an employee of respondent no. 2, the contractor.

14. In the facts and circumstances of the given case, it was firstly required of the petitioner to establish the employee and employer relationship in between him and respondent no.1 and then to have shown that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 01.07.2020. No ocular or documentary evidence is there on the file to establish that the petitioner had been engaged by respondent no.1 only and that he had been working directly under the control and supervision of the said respondent. There is also no evidence worth the name on record to show that the petitioner had continuously worked for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. There are no allegations in the statement of claim nor there is any evidence worth the name on record to show that at the time his services were termination, workmen junior to the petitioner were retained by respondent no. 1. There is also neither any averment or evidence that new/fresh hands had been appointed by respondent no.1 after his alleged termination. Therefore, it cannot be said that there has been any violation of the provisions of Sections 25-G and 25-H of the Act.

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

ISSUE NO. 2

17. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

ISSUE NO. 3

18. This issue was not pressed for by the learned counsel appearing for the respondents at the time of arguments. This issue is accordingly held as not pressed.

RELIEF

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

Announced in the open Court today this 24th day of January, 2024.

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

CHANGE OF NAME

I, Parveen Thakur s/o Sh. Jagdish Kumar Thakur, r/o Thakur Niwas, Near Vaishnu Mata Gufa, Sankatmochan, Shimla (H.P.) have changed my name from Parveen Verma s/o Jagdish Kumar Verma to Parveen Thakur s/o Sh. Jagdish Kumar Thakur for all purposes in future. Please note.

PARVEEN THAKUR
s/o Sh. Jagdish Kumar Thakur,
r/o Thakur Niwas,
Near Vaishnu Mata Gufa,
Sankatmochan, Shimla (H.P.).

CORRECTION OF NAME

My correct name is Manohar Lal instead of Manohar Rana. All concerned please note. Manohar Lal s/o Lt. Sh. Puran Chand, Village Guini, P.O. Lengna, District Mandi (H.P.).

MANOHAR LAL
s/o Lt. Sh. Puran Chand,
Village Guini, P.O. Lengna, District Mandi (H.P.).

CORRECTION OF NAME

I, Lot Ram s/o Noop Ram, r/o Village Dhar, P.O. Ghaniar, Tehsil Balichowki, District Mandi (H.P.) declare that my Minor Son's name is wrongly entered as Guljari Lal in her Aadhar Card No. 5249 4023 1610 whereas her correct name is Gaurav Thakur. All concerned please may note.

LOT RAM
s/o Noop Ram,
r/o Village Dhar, P.O. Ghaniar,
Tehsil Balichowki, District Mandi (H.P.).

CORRECTION OF NAME

I, Lot Ram s/o Noop Ram, r/o Village Dhar, P.O. Ghaniar, Tehsil Balichowki, District Mandi (H.P.) declare that my Minor daughter's name is wrongly entered as Tarna Kumari in her Aadhar Card No. 9584 4311 5815 whereas her correct name is Anjali. All concerned please may note.

LOT RAM
s/o Noop Ram,
r/o Village Dhar, P.O. Ghaniar,
Tehsil Balichowki, District Mandi (H.P.).

CHANGE OF NAME

I, Sonu Devi w/o Sh. Sanjay Kumar, r/o Village Rankha, P.O. Sehorpain, Tehsil Jawalamukhi, District Kangra (H.P.) declare that I have changed my minor daughter's name from Tanisha Kaundal to Tanisha Devi for all purposes in future. Please note.

SONU DEVI
w/o Sh. Sanjay Kumar,
r/o Village Rankha, P.O. Sehorpain,
Tehsil Jawalamukhi, District Kangra (H.P.).

CORRECTION OF NAME

I, Sita Rani w/o Late Sh. Ram Rattan, r/o Village Kheda Chakk, Tehsil Nalagarh, District Solan (H.P.) declare that my name is Sitto Devi entered in my Aadhar Card. Whereas my name Sita Rani is entered in other Government Documents. My correct name is Sita Rani. This should be corrected. All concerned please may note.

SITA RANI
w/o Late Sh. Ram Rattan,
r/o Village Kheda Chakk,
Tehsil Nalagarh, District Solan (H.P.).

CHANGE OF NAME

I, Bhrat Jeet s/o Sh. Rajeev Kumar, r/o Village Rahjol, P.O. Tal, Tehsil and District Hamirpur (H.P.) declare that I have changed my name from Bharat Jeet to Bhrat Jeet for all purposes in future. Please note.

BHRAT JEET
s/o Sh. Rajeev Kumar,
r/o Village Rahjol, P.O. Tal,
Tehsil and District Hamirpur (H.P.).

CHANGE OF NAME

I, Arun Sharma s/o Sher Singh Sharma, Ward No. 6, Village Lower Seri, Near Mangal Ashram, P.O. Joginder Nagar, Tehsil Joginder Nagar, District Mandi (H.P.) Pin-175015 have changed the name of my minor son Swastik Sharma Aadhar No. 2473 2885 4295 as Yatharth Sharma *vide* Affidavit Dated 12-12-2024.

ARUN SHARMA
s/o Sher Singh Sharma,
Ward No. 6, Village Lower Seri,
Near Mangal Ashram, P.O. Joginder Nagar,
Tehsil Joginder Nagar, District Mandi (H.P.).

CHANGE OF NAME

I, Bipan Kumar s/o Keshar Singh, r/o CSIR Holta Colony, Palampur, District Kangra (H.P.) declare that I have changed my minor son's name from Divanshu to Devanshu Kumar. All concerned note.

BIPAN KUMAR
s/o Keshar Singh,
r/o CSIR Holta Colony,
Palampur, District Kangra (H.P.).

CORRECTION OF NAME

I, Sukha Devi w/o Sh. Ram Lal, r/o Village Shirgaon, P.O. Shilla, Tehsil Kamrau, District Sirmaur (H.P.) declare that Sukha Devi and Sandeep Kaur are the same woman *i.e.* both are my name. Due to remarriage my name in the Haryana Land and Children's documents is Sandeep Kaur and my name in my Himachal Land is Sukha Devi.

SUKHA DEVI
w/o Sh. Ram Lal,
r/o Village Shirgaon, P.O. Shilla,
Tehsil Kamrau, District Sirmaur (H.P.).

CHANGE OF NAME

I, Inderjeet Kaur (New Name) aged about 30 years d/o Bachitrer Singh, r/o V.P.O. Andora Upper, Tehsil Amb, District Una (H.P.)-177203 declare that I have changed my name from Indu Bala (Previous Name) to Inderjeet Kaur (New Name). All concerned please may notice.

INDERJEET KAUR
d/o Bachitrer Singh,
r/o V.P.O. Andora Upper,
Tehsil Amb, District Una (H.P.).

CHANGE OF NAME

I, Subhash Chand s/o Sh. Todar Mal, r/o Village Bihan Dhar, P.O. Gharan, Tehsil Sadar, District Mandi (H.P.) declare that I have changed my son's name from Krish Thakur to Krishan Thakur. All concerned please may note.

SUBHASH CHAND
s/o Sh. Todar Mal,
r/o Village Bihan Dhar, P.O. Gharan,
Tehsil Sadar, District Mandi (H.P.).

CHANGE OF NAME

I, Chetna Devi w/o Sh. Lekh Raj, r/o VPO Gharan, Tehsil Sadar, District Mandi (H.P.) declare that I have changed my son's name from Himashu to Himanshu. All concerned please may note.

CHETNA DEVI
w/o Sh. Lekh Raj,
r/o VPO Gharan, Tehsil Sadar, District Mandi (H.P.).

CORRECTION OF NAME

I, Tarlok Singh s/o Bharthari Ram, r/o V.P.O. & Tehsil Nagrota Surian, District Kangra (H.P.) declare that my name in my Aadhar Card is recorded as Tarlok Singh whereas in some other documents it is recorded as Trilok Singh as well as Trilok Chand. But Tarlok Singh, Trilok Singh and Trilok Chand is one and the same person.

TARLOK SINGH
s/o Bharthari Ram,
r/o V.P.O. & Tehsil Nagrota Surian, District Kangra (H.P.).

CHANGE OF NAME

I, Nisha Devi w/o Sh. Chunni Lal, r/o Village Rilli Kalan, P.O. Ekhoo, Tehsil Baddi, District Solan (H.P.) declare that in my minor son's Aadhar Card No. 5952 9053 3148 his name wrongly entered as Kavyansh but his correct name is Kavyansh Dhamalu. All concerned note.

NISHA DEVI
w/o Sh. Chunni Lal,
r/o Village Rilli Kalan, P.O. Ekhoo,
Tehsil Baddi, District Solan (H.P.).

CHANGE OF NAME

I, Bandna Devi aged about 35 years w/o Sh. Sanjeev Kumar, r/o Village Cheli, P.O. Tanbaul, Tehsil Naina Devi Ji, District Bilaspur (H.P.) at present residing at Village Goel Jamala, P.O. Nangal, Tehsil Nalagarh, District Solan (H.P.) declare that I have changed the name of my son from Sai Ashwith to Ashwith Thakur and henceforth my son may be know in the name of Ashwith Thakur.

BANDNA DEVI
w/o Sh. Sanjeev Kumar,
r/o Village Cheli, P.O. Tanbaul,
Tehsil Naina Devi Ji, District Bilaspur (H.P.)

CHANGE OF NAME

I, Narinder Kumar aged 46 years s/o Sh. Thakur Dass, r/o Village Bhatoli, P.O. Baily, Tehsil Dalhousie, District Chamba (H.P.) have changed my name from Narender Kumar to Narinder Kumar & my wife's name from Krishna to Krishna Devi with immediate effect for my daughter's 10th Mark Sheet. All concerned please note.

NARINDER KUMAR
s/o Sh. Thakur Dass,
r/o Village Bhatoli, P.O. Baily,
Tehsil Dalhousie, District Chamba (H.P.).

CHANGE OF NAME

I, Pawana Kumari w/o Sh. Subhash Chand, r/o V.P.O. Patrorak, P.O. Punner, Sub-Tehsil Bhawarna, Tehsil Palampur, District Kangra (H.P.) declare that my name in my Aadhar Card No. 6151 4400 5224 have wrongly entered as Pawana Devi, whereas my correct name is Pawana Kumari. All concerned please note.

PAWANA KUMARI
w/o Sh. Subhash Chand,
r/o V.P.O. Patrorak, P.O. Punner,
Sub-Tehsil Bhawarna, Tehsil Palampur, District Kangra (H.P.).

CHANGE OF NAME

I, Sumita Kumari d/o Sh. Jagdish Chand, r/o Village Sutyara, P.O. Jaunta, Tehsil Nurpur, District Kangra (H.P.) declare that my name as per record was Sumita Kumari. That I want to change my name Himani Suryavanshi. Sumita Kumari and Himani Suryavanshi is same and one person, its me.

SUMITA KUMARI
d/o Sh. Jagdish Chand,
r/o Village Sutyara, P.O. Jaunta,
Tehsil Nurpur, District Kangra (H.P.).

CHANGE OF NAME

I, Pradeep s/o Layak Ram, r/o Village Kalal, P.O. Bhaloo, Tehsil Kupvi, District Shimla (H.P.)-171217 declare that I have changed my daughter's name from Manashe (Previous Name) to Manishi (New Name). All Concerned please may note.

PRADEEP
s/o Layak Ram,
r/o Village Kalal, P.O. Bhaloo,
Tehsil Kupvi, District Shimla (H.P.).

CHANGE OF NAME

I, Seema Devi w/o Sh. Vikram Kumar, r/o Village Mangrot, P.O. Deoli, Tehsil Sadar, District Bilaspur (H.P.) declare that my minor son Rishav Verma s/o Vikram Kumar was born on 28-12-2017. In his Birth Certificate & Himachali Bonafide Certificate his name entered as Rishav Verma. But in his Aadhar Card No. 5421 5867 2279 his name wrongly entered as Ram. Whereas my son's correct name is Rishav Verma & it should be corrected as Rishav Verma in Aadhar Card. Rishav Verma & Ram both are the names of one and the same person. All concerned please note.

SEEMA DEVI
w/o Sh. Vikram Kumar,
r/o Village Mangrot, P.O. Deoli,
Tehsil Sadar, District Bilaspur (H.P.).

CHANGE OF NAME

I, Aditiya Singh s/o Sh. Dilbag Singh, r/o Village Dosarka, P.O. Mohin, Tehsil & District Hamirpur (H.P.) declare that I have changed my name from Aditiya s/o Sh. Dilbag to Aditiya Singh s/o Sh. Dilbag Singh for all purposes in future. Please note.

ADITIYA SINGH
s/o Sh. Dilbag Singh,
r/o Village Dosarka, P.O. Mohin,
Tehsil & District Hamirpur (H.P.).

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