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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 26 अप्रैल, 2017 / 06 वैशाख, 1939

हिमाचल प्रदेश सरकार

सिंचाई एवं जन स्वास्थ्य विभाग

अधिसूचना

शिमला-2, 21 अप्रैल, 2017

संख्या:आई.पी.एच.-बी(एच)1-3/2015-सोलन.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव तिरमली, ब्राये तामिर कोटला तिरमली मार्ग मौजा तिरमली, तहसील व जिला सोलन हिमाचल प्रदेश में कोटला तिरमली

सड़क के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएवं एतद् द्वारा यह घोषित किया जाता है कि निम्नलिखित विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है।

2. यह घोषणा, भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा-19 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम के अधीन भू-समाहर्ता समाहर्ता, लोक निर्माण विभाग, विन्टर फिल्ड शिमला को उक्त भूमि के अर्जन करने के आदेश लेने का एतद् द्वारा निदेश दिया जाता है।

3. भूमि रेखांक का निरीक्षण भू-अर्जन समाहर्ता लोक निर्माण विभाग, विन्टर फिल्ड शिमला के कार्यालय में किया जा सकता है।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा न०	क्षेत्र बीघे/हैक्टर/ बिस्वे में
सोलन	सोलन	तिरमली	6/1	00-05
			99/7/1	00-07
			5/1	00-04
			5/2	00-11
			101/8/1	00-10
			12/1	02-09
			18/1	00-12
			16/1	00-08
			14/1	01-00
			13/1	02-03
			98/7/1	00-04
			33/1	01-05
			37/1	00-17
			39/1	01-05
			39/2	00-02
			40/1	00-15
			77/1	02-05
			117/76/1	00-14
			116/76/1 किता .19	00-09 16-05

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव (सिंचाई एवं जन स्वास्थ्य)।

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Dharamshala, the 2nd February, 2017*

No. Shram (A) 6-2/2014 (Awards).—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 Officer, Labour Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr.No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	94/13	Karnail Singh	M.D. M/S Crest Steel, Una.	03-12-2016
2.	88/13	Raj Kumar	M.D. M/S Crest Steel, Una.	03-12-2016
3.	99/13	Paramjeet Singh	M.D. M/S Crest Steel, Una.	03-12-2016
4.	87/13	Iqbal Singh	M.D. M/S Crest Steel, Una	03-12-2016
5.	473/16	Sahab Singh	E.E.HPPWD, Jawali.	16-12-2016
6.	576/16	Inder Singh	E.E.HPPWD, Jawali.	16-12-2016
7.	675/16	Manoj Kumar	President/M.D. DAV Committee	16-12-2016
8.	673/16	Tara Chand	President/M.D. DAV Committee	16-12-2016
9.	194/15	Bala Ram	D.F.O. Shamshi	19-12-2016
10.	464/15	Bal Mukund	E.E. I&PH, Killar	19-12-2016
11.	400/15	Rita	E.E. I&PH, Killar	20-12-2016
12.	399/15	Chander Prakash	E.E. I&PH, Killar	20-12-2016
13.	322/14	Jeeto	Director K.C. Group of Industries	20-12-2016
14.	141/15	Duni Chand	Dy. Dir.Agriculture	20-12-2016
15.	382/15	Moti Singh	E.E. HPPWD, Killar	22-12-2016
16.	245/15	Bimla Devi	E.E. HPPWD, Killar	22-12-2016
17.	397/15	Veena	E.E. HPPWD, Killar	22-12-2016
18.	485/15	Roop Singh	E.E. HPPWD, Killar	22-12-2016
19.	503/15	Dhian Singh	E.E. HPPWD, Killar	22-12-2016
20.	504/15	Thakur Chand	E.E. HPPWD, Killar	22-12-2016
21.	94/14	Kuldeep Singh	D.F.O. Una	22-12-2016
22.	274/15	Devi Lal	E.E. HPPWD, Killar	23-12-2016
23.	104/14	Sonia	M.D. M/S Tarrace Pharmaceutical	24-12-2016
24.	105/14	Partap Singh	M.D. M/S Tarrace Pharmaceutical	24-12-2016
25.	335/16	Kuldeep Kumar	E.O. Muncipal Council	24-12-2016

By order,
Sd/-

Pr. Secretary (Lab. & Emp.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 94/2013

Sh. Karnail Singh s/o Shri Dewan Chand, c/o Shri R.K. Singh Parmar, Working President
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab ...*Petitioner.*

Versus

1. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, VPO Karluhi, Tehsil Amb, District Una, H.P. (Present Office),

2. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, #308, Cee Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) Respondents.

03-12-2016 Present : Sh. R.K. Singh Parmar, A.R. for the petitioner.

Respondent nos.1 &2 exparte as before.

No PW is present. Heard. Authorised representative for the petitioner has made statement for withdrawal of claim petition/reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the authorised representative for the petitioner as stated above, the claim petition/reference no. 94/13 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action at its end.

5. The file, after completion be consigned to the records.

Announced:
03-12.2016

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 88/2013

Sh. Raj Kumar s/o Shri Hari Datt, c/o Shri R.K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab Petitioner.

Versus

1. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, VPO Karluhi, Tehsil Amb, District Una, H.P. (Present Office),

2. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, #308, Cee Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) Respondents.

03-12-2016 Present : Sh. R.K. Singh Parmar, A.R. for the petitioner.

Respondent nos.1 &2 ex parte as before.

No PW is present. Heard. Authorised representative for the petitioner has made statement for withdrawal of claim petition/reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the authorised representative for the petitioner as stated above, the claim petition/reference no. 88/13 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action at its end.
5. The file, after completion be consigned to the records.

Announced:
03-12.2016

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 99/2013

Sh. Paramjeet Singh s/o Shri Jagdish Singh, c/o Shri R.K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab.*Petitioner.*

Versus

1. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, VPO Karluhi, Tehsil Amb, District Una, H.P. (Present Office),

2. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, #308, Cee Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office)*Respondents.*

03-12-2016 Present : Sh. R.K. Singh Parmar, A.R. for the petitioner.

Respondent nos.1 &2 ex parte as before.

No PW is present. Heard. Authorised representative for the petitioner has made statement for withdrawal of claim petition/reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the authorised representative for the petitioner

as stated above, the claim petition/reference no. 99/13 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action at its end.
5. The file, after completion be consigned to the records.

Announced:
03-12.2016

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 87/2013

Sh. Iqbal Singh s/o Shri Daljeet Singh c/o Shri R.K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab. *...Petitioner.*

Versus

1. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, VPO Karluhi, Tehsil Amb, District Una, H.P. (Present Office),

2. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd, #308, Cee Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) *...Respondents.*

03-12-2016 Present: Sh. R.K. Singh Parmar, A.R. for the petitioner.

Respondent nos.1 &2 exparte as before.

No PW is present. Heard. Authorised representative for the petitioner has made statement for withdrawal of claim petition/reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the authorised representative for the petitioner as stated above, the claim petition/reference no. 87/13 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action at its end.

5. The file, after completion be consigned to the records.

Announced:
03-12.2016

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 473/2016

Sh. Sahab Singh s/o Shri Dhiano Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. *...Petitioner.*

Versus

The Executive Engineer, HPPWD Jawali Division, Distt. Kangra, H.P. *....Respondent.*

16-12-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D. A. for the respondent.

Case called on several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.20 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

16-12-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

16-12-2016

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 473/2016

Sh. Sahab Singh s/o Shri Dhiano Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. *...Petitioner.*

Versus

The Executive Engineer, HPPWD Jawali Division, Distt. Kangra, H.P. *...Respondent.*

16-12-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called on several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.20 A.M. Be awaited and put up after lunch hours.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

16-12-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

16-12-2016

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 576/2016

Sh. Inder Singh s/o Sh. Boota Singh, r/o Village Paladi, P.O. Kot, at present V.P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. ...*Petitioner.*

Versus

The Executive Engineer, HPPWD Jawali Division, Distt. Kangra, H.P. ...*Respondent.*

16-12-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D. A. for the respondent.

Case called on several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.25 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

16-12-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D. A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
16-12-2016

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 675/2016

Sh. Manoj Kumar s/o Shri Rameshwar Dass, through Sh.N.L.Kaundal (A.R./ Legal advisor)
BMS, H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ...*Petitioner.*

Versus

1. The President/Managing Director, D.A.V. College Management Committee, Chitra Gopta Road, New Delhi.

2. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P. ...*Respondents.*

16-12-2016 Present : None for the petitioner.

Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

(K.K. Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

16-12-2016 Present : None for the petitioner.

Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.45 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
16-12-2016

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 673/2016

Sh. Tara Chand s/o Shri Prithi Chand, through Sh.N.L.Kaundal (A.R./ Legal advisor) BMS,
H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ...*Petitioner.*

Versus

1. The President/Managing Director, D.A.V. College Management Committee, Chitra Gopta Road, New Delhi.

2. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P. ...*Respondents.*

16-12-2016 Present : None for the petitioner.

Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

16-12-2016 Present : None for the petitioner.

Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, adv. csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.50 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
16-12-2016

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 194/2015

Date of Institution : 23.04.2015

Date of decision : 19.12.2016

Shri Bala Ram s/o Shri Het Ram, r/o Village Shauch, P.O. Dhara, Tehsil & District Kullu,
H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Parvati Forest Division Shamshi, District Kullur, H.P.
...Respondent.

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

For the Petitioner : Sh. Dinesh Gupta, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Bala Ram S/O Shri Het Ram, R/O Village Shauch, P.O. Dhara, Tehsil & District Kullu, H.P. during December, 1996 to January, 2008 and finally during February, 2008 by Divisional Forest Officer, Parvati Forest Division Shamshi, District Kullu, H.P., without complying 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. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Averments made in the claim petition revealed that the petitioner was employed in Jari range on daily wage basis since December, 1996 where he continued to work till his termination on 01.03.2008 and his services were terminated without assigning any reason or notice. The grievance of the petitioner also remains that although he had completed 240 days in preceding 12 calendar months from date of retrenchment and his juniors have been retained but service of petitioner had been illegally retrenched in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Accordingly, petitioner prays for reengagement with back wages and seniority.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and cause of action. On merits denied that petitioner was engaged on daily wage basis since 1996 who was stated to be engaged purely on daily basis being seasonal worker since August, 1997 in Range Officer Jari District Kullu. It is alleged that as and when petitioner attended the office he was engaged subject to availability of work and funds. Besides,

maintained that petitioner worked intermittently till February, 2008 who absented from attending the job and thus there was no question of termination of the services of petitioner in violation of any of the provisions of the Act. It has been emphatically denied that juniors of the petitioner had been retained in service whereas the petitioner has illegally retrenched by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner did not file any rejoinder as statement of ld. counsel of petitioner was recorded on 9.12.2015.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Hira Lal Rana, Divisional Forest Officer, Parvati Forest Division at Shamshi District Kullu as RW1, tendered/proved his affidavit Ex. RW1/A and mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 09.12.2015 for determination:

1. Whether time to time termination of the services of the petitioner during December, 1996 to January, 2008 and finally during February, 2008 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 petition is not maintainable in the present form as alleged? ...*OPR*.
4. Whether the petitioner has no cause of action to maintain the present petition as alleged? ... *OPR*.

Relief.

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

Issue No. 1 : No

Issue No .2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that there is no iota of evidence on record on plea of petitioner qua termination of the services of petitioner from time to time. The case of the petitioner also remains that initially he was given break in service from time to time and finally his services had been terminated in the year February, 2008. As per mandays chart Ex. RW1/B petitioner is shown to have worked from 1997 to 2008 working for different number of days. It is also evident from the mandays chart on record that claimant/petitioner has worked in the year 2008 for merely 29 days preceded by year 2007 when he worked for 14 days only which goes to show that in the year 2008 and prior to year 2007 claimant/petitioner had not worked for 240 days as claimed by him. Certainly, respondent was under obligation to serve legal notice as required by law, had the petitioner worked for 240 days in preceding 12 months of termination there was obligation on the part of employer to issue notice under Section 25-F of the Industrial Disputes Act, 1947 and compensation in lieu of notice. There is sufficient evidence on record led by respondent that petitioner was not regular in attending his job.

12. Stepping into witness box as PW1 petitioner has sworn his affidavit Ex. PW1/A deposed on oath as maintained in claim petition was remained in service. The claim of the petitioner also remains that seniority list of daily wager labourers had not been circulated by the employer and that juniors had been allowed to continue whereas petitioner though senior to them. A bare glance at Clause 5 of affidavit Ex. PW1/A of petitioner would also reveal that petitioner had not worked for 240 days from 1997 to 2008 except the years 2000 when petitioner claimed to have worked for 268 days and 265 days in 2001 respectively but from the mandays chart Ex. RW1/B which gets contradicted in as much as in the year 2001 petitioner had worked for 235 days whereas in the year 2000 petitioner had worked for 139 days. It has been emphatically stressed that seniority list of daily wager and seasonal workers had not been maintained in the Divisional level. In cross-examination of petitioner has admitted that forest department had seasonal work but admitted that he was involved in agricultural activities along-with his father and about 5 bighas land of his father who stayed with him. Significantly, he has admitted that whenever respondent/department required the services of petitioner he was allowed to join which establishes that services of petitioner were not terminated by the respondent, thus, question of termination of the services of petitioner did not arise.

13. Repudiating the evidence led by the petitioner, Shri Hira Lal Rana, Divisional Forest Officer, Palampur has admitted that petitioner was engaged in 1996 in Jari Range and he remained worked till 2008 and that petitioner had left his work at his own accord and thus question of termination of the services of petitioner by the respondent/department does not arise. It is however contended that petitioner himself had willfully abandoned the job and thus there was no termination. From aforesaid evidence on record, the claimant/petitioner has failed to establish that he had worked for 240 days in preceding 12 months and thus there was issuance of legal notice under Section 25-F of the Act rather no notice was required and question of compensation did not arise. It is proved on record that petitioner did not come after 2008 but respondent failed to issue any notice on absence of petitioner and thus plea of abandonment cannot be asserted. For the aforesaid reasons, claimant/petitioner is not entitled to any relief as prayed by him in the claim petition. Thus, both these issues are answered accordingly.

ISSUE NO. 3

14. Thus, the petition is held to be not maintainable as the petitioner has failed to establish violation of any of the provisions of the Industrial Disputes Act by respondent/department who is also held not entitled even compensation in lieu of service rendered by him. Hence, this issue is answered against the petitioner and in favour of respondent.

ISSUE NO.4

15. In view of the findings on the issues no.1 and 2, it appears that the petitioner has no cause of action. Consequently, this issue is answered against the petitioner and in favour of the respondent.

RELIEF

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 464/2015

Date of Institution : 29-10-2015

Date of decision : 19-12-2016

Shri Bal Mukand s/o Shri Durga Dutt, r/o Village and Post Office Jagat Sukh, Tehsil
Manali, District Kullu, H.P. *...Petitioner.*

Versus

The Executive Engineer, I.& P.H. Division No.1, Kullu, District Kullu, H.P. *...Respondent/*

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

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

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Bal Mukand S/O Shri Durga Dutt, R/O Village and Post Office Jagat Sukh, Tehsil Manali, District Kullu, H.P. before the Executive Engineer, I.&P.H. Division No.1, Kullu, District Kullu, H.P. vide demand notice dated 10.01.2012 regarding his alleged illegal termination of services during June, 2003 suffers from delay and laches? If not, Whether termination of the services of Shri Bal Mukand S/O Shri Durga Dutt, R/O Village and Post Office Jagat Sukh, Tehsil Manali, District Kullu, H.P. by the Executive Engineer, I.&P.H. Division No.1, Kullu, District Kullu, H.P. during June, 2003 without complying 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 aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Averments made in the claim petition revealed that the petitioner had been appointed as beldar by the respondent on daily wages on 16.7.2002 on muster roll basis who continued to worked till 30.6.2003 when he completed 240 days in each calendar year as well as in the last 12 calendar months prior to termination and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is stated that the services of petitioner had been orally terminated by the respondent without complying the mandatory provisions of the Act. After termination of the services of petitioner, he had approached the Hon'ble Administrative Tribunal by filing O.A. No.3732/2003 and the same had been decided by the Hon'ble Tribunal on 16.12.2003 with the directions to reengage the petitioner if any other junior persons had been engaged by the respondent but the respondent had not reengaged the services of petitioner upto December, 2011 despite the several requests and thereafter petitioner had raised demand notice dated 10.1.2012 and copy of the same had been sent to the Labour Officer-cum- Conciliation Officer, Kullu. During the conciliation proceedings, the dispute could not be settled amicably between the parties and therefore Conciliation Officer had sent failure report to the appropriate government for making reference. Thereafter, Labour Commissioner had not referred the dispute to this Tribunal and report under Section 12 (4) had been declined vide order dated 28.6.2013. Thereafter, petitioner had assailed the order dated 28.6.2013 before the Hon'ble High Court of H.P. by way of CWP No.3931/2015 and the Hon'ble High Court decided the said CWP on 28.9.2015 in favour of petitioner with directions to the Labour Commissioner to refer the case of the petitioner to this Tribunal for adjudication. It is further stated that after complying with the order of the Hon'ble High Court, the Labour Commissioner had referred the case of the petitioner to this Tribunal/Court for adjudication which is the present dispute. It is further alleged that at the time termination of the services of petitioner, respondent had not followed the principle of 'Last come First go' and retained persons junior to the petitioner namely Sh. Lal Chand, Ramesh, Tot Ram, Bir Singh, Sonu, Prem Chand, Hem Singh and Urmila who were appointed on 1.8.2002, 1.9.2002, 1.11.2002, 1.11.2002, 1.12.2002, 1.1.2003, 1.1.2003 and 1.2.2003 respectively which is in violation of provisions of Section 25-G of the Act. In CWP No.8315/2012 Sanjay Kumar's case govt. had acknowledged delay of 11 years and allowed him to join in office of SE Hamirpur. In the case in hand, there is merely delay of 9 years as petitioner's services were terminated in 2003 and demand notice was served in 2012. It is further alleged that the act of respondent in the present case is highly unjustified, arbitrary unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947. It is alleged that after

termination of the services of petitioner, he had remained unemployed and not gainfully employed anywhere in any government department or private organization. The petitioner prays for setting aside the termination order dated 1.7.2003 and giving him the benefit of seniority, continuity in service regularization and back wages with all consequential service benefits and to any other relief.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner had worked intermittently as beldar *w.e.f.* 16-7-2002 to 30-6-2003. It is denied that petitioner had completed 240 days in the calendar year as well as in the preceding 12 calendar months prior to his termination though petitioner is not covered under the definition of Section 25-B of the Act as well as there was no violation of any provisions of the Act. It is admitted that petitioner was verbally disengaged from service *w.e.f.* 1-7-2003 due to financial constraints and shortage of funds. It is further stated that petitioner had not completed 240 days of continuous service in any of the calendar year *w.e.f.* 16-7-2002 to 30-6-2003. It is admitted that the petitioner had filed OA before the Hon'ble Administrative Tribunal and as per the directions of the Hon'ble Tribunal, respondent/department had not reengaged any junior persons as such petitioner was reengaged. It is stated that persons mentioned in claim petition have been disengaged along-with the petitioner when the department was faced with financial constraints and it was not possible to accommodate all the workers. It is further stated that the department had not reengaged any persons junior to the petitioner except on compassionate ground as such respondent/department had not violated the provisions of Section 25-G of the Act. It is alleged that petitioner had raised demand notice after several years when the Hon'ble Tribunal had dismissed as withdrawn OA no. 3732/2003 and petitioner was not permitted to file the present petition. It is alleged that petitioner was not in continuous service of 240 days under Section 25-B of the Act and junior persons to the petitioner had neither been reengaged nor retained so provisions of Section 25-G and 25-H of the Act were also not attracted in this case. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, O.A. No. 3732/2003 dated 26.12.2003 Ex. PW1/B, Demand notice Ex. PW1/C, reply to the demand notice Ex. PW1/D, Order dated 28.6.2013 Ex. PW1/E, copy of Hon'ble High Court CWP No.3931/2015 Ex. PW1/F and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Keshav Ram Kulvi, the then Executive Engineer, I&PH, Division No.1 Kullu as (RW1), tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B, seniority list Ex. RW1/C, seniority list *w.e.f.* 1-1-2002 to 30-4-2016 Ex. RW1/D, copy of muster rolls Ex. RW1/E1 to Ex. RW1/E8 and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 05-3-2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 10-1-2012 qua his termination of services during June, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*
2. Whether termination of the services of petitioner by the respondent during June, 2003 is/was illegal and unjustified as alleged? ... *OPP.*

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

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPP*.

Relief.

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

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that as per mandays chart Ex. RW1/B claimant/petitioner had worked for 69 days in the year 2002 and 131.5 days in year 2003. It can also be noticed from mandays chart that petitioner/claimant was not engaged in the month of April, 2004 which goes to show that there was break in service due to which it could not be construed that petitioner had worked for 240 days continuously preceding his termination by alleged verbal order on 1-7-2003. Hence, provisions of Section 25-B of the Act do not come to the rescue of the claimant/petitioner. For the aforesaid reasons, it may not be erroneous to conclude that respondent had not violated provisions of Section 25-F of the Act which required issuance of prior one month's notice or wages in lieu thereof.

12. Another aspect highlighted by claimant/petitioner in this case the respondent had also violated provisions of Section 25-G of the Act. In para no.6 of the claim petition, he has alleged that principle of 'Last come First go' which has not been observed by the respondent retaining junior worker namely Lal Chand (1-8-2002), Ramesh (1-9-2002), Tot Ram, (1-11-2002), Bir Singh (1-11-2002), Sonu (1-12-2002), Prem Chand (1.1.2003), Hem Singh (1-1-2003) and Urmila (1-2-2003). To appreciate plea so raised by the claimant/petitioner, it would be relevant to refer to letter dated 23-3-2012 which shows that petitioner was engaged on 16-7-2002 and was consequently disengaged. One Hari Chand is shown to have been engaged on 1st March, 2003 who has been regularized. So the grievance of the petitioner circumvent from retention of Hari Chand shown to have join on 1.1.2003 whereas petitioner on 16-7-2002. The seniority list Ex. RW1/C does not show name of the claimant/petitioner although several workers are shown to have been appointed from 1-8-2002 to 31-5-2003. Ld. counsel/AR for the petitioner has emphasized that Hari Chand being junior had been retained in job and regularized clearly violates the mandates of Section 25-G of the Act but to my mind from the scrutiny of testimony of respondent (RW1) Shri Keshav Ram Kulvi, Executive Engineer, it is revealed that name of Hari Chand had been shown at

serial no.30 who joined on 1-1-2003 but he had factually joined on 1-1-2002. He has clarified in cross-examination that due to clerical mistake date of engagement of Hari Chand mentioned at serial no.30. Even respondent had admitted in cross-examination that he had not mentioned in reply that Hari Chand does not go to establish the case of petitioner but has alleged that some independent workers who were junior persons were retained and regularized ignoring rights of claimant/petitioner although the fact that Hari Chand was senior to petitioner also finds support from muster rolls Ex. RW1/E1 to Ex. RW1/E8 on record which clearly established that said Hari Chand had not joined on 1-1-2003 but in January, 2002. Significantly, petitioner himself has admitted in cross-examination that the workers whose names mentioned in para no.6 had not worked after the year 2003. He has also admitted that due to paucity of funds department had not engaged them including persons mentioned in para no.6 of claim of petitioner. Not only this, petitioner has admitted that he had not worked from 2007 to 2012. All these facts cumulatively suggest fact that no junior had been retained including Hari Chand and that petitioner was junior to said Hari Chand who was regularized being senior in service having rendered requisite number of days and thus, there was no violation of Section 25-F of the Act on part of the respondent. All the issues are answered accordingly.

ISSUE NO.4

13. Thus, the petition is held to be not maintainable as the petitioner has failed to establish violation of any of the provisions of the Industrial Disputes Act by respondent/department who is also held not entitled even compensation in lieu of service rendered by him. Hence, this issue is answered against the petitioner and in favour of respondent.

RELIEF

14. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of December, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 400/2015

Date of Institution : 10-09-2015

Date of Decision : 20-12-2016

Ms. Rita d/o Shri Man Chand, r/o Village and Post Office Karyas, Tehsil Pangi, District Chamba, H.P. ...Petitioner

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba,
H.P. ...Respondent

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

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

Whether the industrial dispute raised by the worker Ms. Rita D/O Shri Man Chand, R/O Village and Post Office Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 2.2.2012 regarding her alleged illegal termination of service during September, 2001 suffers from delay and latches? If not, Whether termination of the services of Ms. Rita D/O Shri Man Chand, R/O Village and Post Office Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2001 without complying 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 aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of July, 1994 who continuously worked till September, 2001 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as „the Act“ for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2001 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2001 when the services of petitioner were terminated by way of oral order, she was not

served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2001. She further prayed for reinstatement in service w.e.f. month of September, 2001 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between July, 1994 to September, 2001 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2001 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division

Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination which are as under:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02-02-2012 qua her termination of service during September, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of the services of petitioner by the respondent w.e.f. September, 2001 is/was illegal and unjustified as alleged? ...*OPP*.
3. If issue no.1 or issue no. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs. 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of July, 1994 who continuously worked till 2001 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it

had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from July, 1994 to September, 2001. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 124.5 days in the year 1994, 171.5 days in 1995, 116 days in 1996, 160 days in 1997, 115 days in 1998, 116 days in 1999, 114 days in 2000 and 115 days in 2001 and thus a total of her service in 1994 to 2001 in 8 years she had worked for 1032 days in her entire service period. Be it noticed that except the years 1994, 1996 and 1998 to 2001 she had worked for more than 160 days

and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 115 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2001 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2001, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also

worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in

accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since

the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her serviceterminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellanmployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an**

important circumstances which the Labour Court must keep in view before granting relief”.

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 1032 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten and half years** i.e. demand notice was given on 02.02.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 32 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not

maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 399/2015

Date of Institution : 10.09.2015

Date of Decision : 20.12.2016

Shri Chander Prakash s/o Shri Mahesh Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi,
District Chamba, H.P. *...Petitioner*

Versus

Executive Engineer, I&PH/HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
...Respondent

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

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

Whether the industrial dispute raised by the worker Shri Chander Prakash S/O Shri Mahesh Chand, R/O Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 03.04.2012 regarding his alleged illegal termination of service during October, 2003 suffers from delay and laches? If not, Whether termination of the services of Shri Chander Prakash S/O Shri Mahesh Chand, R/O Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2003 without complying 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 aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1998 who continuously worked till October, 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 21 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 2003 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2003. He further prayed for reinstatement in service w.e.f. month of

October, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1998 to October, 2003 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2006 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D22 copy of orders/awards and closed the evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 03.04.2012 qua his termination of service during October, 2003 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ... *OPP.*

2. Whether termination of the services of petitioner by the respondent during October, 2003 is/was illegal and unjustified as alleged? ...*OPP*.
3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.90,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1998 who continuously worked till 2003 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to October, 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2003 by oral order had

engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 163 days in the year 1998, 168 days in 1999, 98 days in 2000, 140 days in 2001, 120 days in 2002 and 140 days in 2003 and thus a total of his service in 1998 to 2003 in 06 years he had worked for 829 days in his entire service period. Be it noticed that except the years 2000 to 2003 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 140 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise

mandays, details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rwl/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2003, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed

between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing

industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as them same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellanteemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but**

surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 829 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** i.e. demand notice was given on 03.04.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i. e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 90,000/- (Rupees ninety thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.90,000/- (Rupees ninety thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 322/2014

Date of Institution : 24.10.2014

Date of decision : 20.12.2016

Smt. Jeeto Devi w/o Shri Dharam Pal, VPO Pandoga, Tehsil & District Una, H.P.

...Petitioner

Versus

The Director, K.C. Groups of Institutions, Pandoga, Tehsil & District Una, H.P.

...Respondent

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

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

Sh. Vijay Kaundal, Adv.

For the Respondent : Respondent already exparte

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

Whether termination of the services of Smt. Jeeto Devi W/O Shri Dharam Pal, VPO Pandoga, Tehsil & District Una, H.P. employed as helper by The Director, K.C. Groups of Institutions, Pandoga, Tehsil & District Una, (H.P.) w.e.f. 05.5.2013 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. It is averred by the petitioner in the statement of claim that she had joined the services of the respondent on 21.6.2009 as warden helper who had worked continuously in the said capacity till 4.5.2013 without any break however the conduct of petitioner was satisfactory with the respondent. Averments made in the claim petition further revealed that at the time of appointment of petitioner she had offered of Rs.5000/- per month as salary and the same was accepted by the

petitioner but petitioner was paid Rs.3500/- instead of Rs.5000/- and when petitioner asked the management regarding her payment respondent/management replied that Rs.1500 was deducted on account of petitioner's EPF share which is covered under the Provident Fund Scheme. It is alleged the during the service period respondent had never provided her wages slip as well as EPF account number. It is stated that when petitioner had reported for duty on 5.5.2013, the security incharge of institution had not allowed the petitioner to enter the institution and told the petitioner that he had been instructed by the respondent/management to not allow the petitioner on duty. It is alleged that at the time of her termination, respondent/management had not issued any show cause notice to the petitioner as well as charge-sheet as per rules. Neither any enquiry was conducted against the petitioner. It is alleged that respondent had not complied the provisions of Section 25-F(a) (b) and (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as „the Act” for brevity). It is stated that respondent had not only violated the provisions of Section 25-F of the Act but also violated the principle of natural justice whereas the petitioner had completed 240 days in each calendar year as well as 12 calendar preceding months from the date of illegal termination. It is alleged that respondent/management had not followed the principle of 'Last come First go' though at the time of termination of the services of petitioner respondent had retained persons junior to petitioner and thereafter respondent had also engaged fresh hands without giving any opportunity to the petitioner for reemployment which is violation of provisions of Section 25-H of the Act. It is alleged that respondent had orally terminated the service of petitioner w.e.f. 5.5.2013 as and when she had demanded to not pay less minimum wages which is discriminatory, harassment and unfair labour practice on the part of the respondent/management as per 5th Schedule Clause 5(a) and (ii) of the Act. It is stated that the act of the respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of Industrial Disputes Act while terminating the services of petitioner. It is stated that after termination of the services of petitioner, she is still unemployed and not gainfully employed anywhere. The petitioner prays for setting aside oral order of termination/retrenchment by the respondent w.e.f.5.5.2013. She further prayed for reinstatement in service along-with back wages, seniority including continuity in service and to any other relief petitioner is entitled.

3. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and jurisdiction. On merits, admitted that petitioner was engaged as Safai Karamchari. It is further stated that she was casual labourer and her duty hours were 1 hours 30 minutes i.e. 6.30 AM to 8:00 AM in the morning and 5:30 PM to 8:00 PM i.e. 2.30 hours in the evening and she was not full time labourer. It is denied that the act and conduct of the petitioner was satisfactory. It is stated that there were complaints against the petitioner which were made by the girls in the hostel. It is stated that the girls of the hostel made charges against the petitioner that petitioner was in habit of stealing their materials and roughly talked with them. It is denied that petitioner was a casual labourer and she was not entitled any EPF etc. besides that the act and conduct of the petitioner was not satisfactory as such the respondent had terminated the services of petitioner. Accordingly petition was sought to be dismissed.

4. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

5. It is apt to mention here that as per zimini order dated 4.6.2016, the case was listed for cross-examination of petitioner but neither respondent nor his counsel had put in appearance and thus was preceded against exparte. Before proceeding further, it is also mentioned here that initially respondent company had appeared before this court through counsel Shri Rajeshwar Sapahya and Shri N.K. Chabba on 24.2.2015, 24.3.2015, 27.4.2015, 23.5.2015, 14.7.2015 and 3.9.2015 and on 27.4.2015 respondent had sought to file reply which was filed thereafter rejoinder was also filed and petitioner's Authorized representative continued to appear till 19.12.2016 and when no one turn up to contest the petition, the respondent was proceeded exparte. Accordingly, petitioner was allowed to lead her exparte evidence in support of claim petition.

6. Admittedly, petitioner was appointed as warden helper w.e.f. 21.6.2009 who remained on monthly salary of Rs.5000/- per month. There is sufficient reliable and unrebutted evidence that petitioner was not allowed to join for her duties after termination of her service. Thus, it is established that even after assuring engagement of petitioner she was not allowed to join respondent with malafide intention. Be it noticed that petitioner has sworn her affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein material facts revealing her appointment as warden helper and monthly salary of Rs.5000/- for which she had been engaged. This fact further reveals that the respondent did not allow to petitioner to join her duties. Non appearance of respondent is manifestly suggestive fact that respondent had failed to controvert the allegations of the petitioner as maintained in the claim petition coupled with evidence on record. Thus, unrebutted testimony of the petitioner establishes that petitioner had worked for more than 240 days prior to her termination and that respondent had not complied the provisions of Sections 25-F of the Industrial Disputes Act. Since petitioner has not proved or tendered on record any seniority list of employees working with respondent, it would be unsafe to hold that respondent had factually violated Section 25-G or 25-H of the Industrial Disputes Act. Uncorroborated testimony of petitioner cannot be the basis to hold violation of Section 25-G or H as stated above. The respondent having failed to issue any notice prior to terminate the services of petitioner or make her payment of one months salary before retrenchment of petitioner, the petitioner is held to have completed 240 days who had not been given any opportunity of being heard before termination of her services. Since the petitioner has discharged the initial onus that she was not gainfully employed during the forced idleness, this court is left with no option but to hold that after disengagement/termination of petitioner has remained unemployed moreso respondent has filed reply to contest the claim petition but did not lead any evidence. As such, petitioner was held to be not gainfully employed after his termination *i.e.* after 2013 and therefore the unrebutted evidence of respondent established violation of the provisions of Sections 25-F of the Industrial Disputes Act.

7. In view of the foregoing discussions, termination of the services of petitioner by respondent on 5.5.2013 is hereby set aside and quashed and the respondent is directed to reinstate the petitioner forthwith. The petitioner is further held entitled to 50% back wages from the date of her illegal termination till her reinstatement by the respondent. The parties, however, shall bear their own costs.

8. The reference is answered in the aforesaid terms.

9. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

10. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 141/2015

Date of Institution : 26.03.2015

Date of decision : 20.12.2016

Shri Duni Chand s/o Shri Mela Ram, o/o the Subject Matter Specialist (Agriculture) Salooni, District Chamba, H.P. through the District Secretary, All India Trade Union Congress, Camp Office HPSEB Colony Complex Salooni, P.O. Salooni, District Chamba, H.P. ...*Petitioner.*

Versus

The Deputy Director of Agriculture, Chamba, District Chamba, H.P. ...*Respondent.*

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

For the Petitioner : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the demand raised vide demand notice dated 12-10-2012 by Shri Duni Chand S/O Shri Mela Ram through the District Secretary, All India Trade Union Congress, Camp Office H.P.S.E.B. Colony Complex Salooni, P.O. Salooni, District Chamba, H.P. regarding regularization of his daily wages services w.e.f. 01-01-2004 from the Deputy Director of Agriculture, Chamba, District Chamba, H.P., is legal and justified? If yes, to what relief, past service benefits, seniority and other consequential service benefits the above workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition revealed that petitioner initially engaged as daily wage basis as beldar/DPL on muster roll basis in the month of August, 1995 under the Subject Matter Specialist (Agriculture), Salooni District Chamba, H.P. where he continuously worked upto 20th July, 2003. Averment made in the claim petition further revealed that the services of petitioner had been illegally retrenched by the respondent/department w.e.f. 21st July, 2003 vide notice dated 18.7.2003. Thereafter, petitioner had raised industrial dispute against the termination order and the same had been referred for adjudication by the appropriate government to this Tribunal which was registered as Reference no.35/2008, in which this Tribunal had quashed and set aside the action of the respondent/department in terminating services of petitioner vide order dated 16.2.2011 with the directions that the petitioner was entitled for reinstatement with seniority and continuity in service. After that, petitioner made joining report before the respondent and petitioner had been reengaged five months later i.e.w.e.f.13.7.2011 in stead of 16.2.2011. As per Award dated 16.2.2011, the petitioner had completed eight years of continuous service with 240 days in each

calendar year as on 31.12.2003 and thus petitioner is entitled for regularization w.e.f. 1.1.2004 under the regularization policy of Himachal Pradesh government but his requests to this effect were ignored. It is averred that the respondent/department had regularized the services of junior persons namely Smt. Dewaki w/o late Sh. Durga, Smt. Asha Devi w/o late Sh. Vipin Kumar and Sh. Sher Singh s/o Raj Mal who were initially engaged on muster roll in the months of January, 2001, May, 2001 and 24.5.2004 respectively but the services of petitioner were not regularized which was illegal, unjustified and against the principle of natural justice which is in violation of Article 14 and 16 of Constitution of India. It is stated that the petitioner had been performing his duties with full devotion and he had never been charge-sheeted for any act of indiscipline, negligence of work or misconduct and respondent having not regularized the services of petitioner was unfair labour practice. Accordingly, petitioner prays for regularization of daily wages service w.e.f. 1.1.2004 having completed 08 years of service per the policy of HP Govt. along-with arrears of difference of wages w.e.f. 16.2.2011 and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability. On merits admitted that petitioner was engaged as casual worker in the month of August, 1995. It is further denied that petitioner had worked from 1995 to 2003 continuously with the respondent/department. It is stated that the earlier Reference No.35/2008 of the petitioner was already adjudicated by this Tribunal. It is admitted that after Award dated 16.2.2011, petitioner had reported for duties on 13.7.2013 and continuously worked thereafter. It is further stated that the matter of petitioner is under consideration and department has sought clarification from the government from which date the services of petitioner is to be regularized. It is further stated that after clarification and sanction from the government, the services of the petitioner will be regularized. It is admitted that Smt. Devki Devi and Smt. Asha Devi had been engaged on daily basis on compassionate ground whereas Shri Sher Singh had been appointed by the department of Social Justice and Empowerment against the quota of visually impaired. Accordingly, petition being devoid of merits has been prayed to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, copy of Award dated 16.2.2011 Ex. PW1/B, copy of demand notice dated 11.6.2012 Ex. PW1/C, copy of joining report Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Kumar Saklani, Dy. Director of Agriculture, Chamba as RW1, tendered/proved his affidavit Ex. RW1/A, letter dated 7.7.2014 Ex. RW1/B, letter dated 22.9.2014 Ex. RW1/C, letter dated 13.5.2016 Ex. RW1/D and letter dated 9.9.2015 Ex. RW1/E and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 06.11.2015 for determination:

1. Whether the demand raised vide demand notice dated 12.10.2012 by Shri Duni Chand (Petitioner/claimant) qua regularization of daily wages services w.e.f. 01.01.2004 from 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? ...*OP.P*.
3. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR*.

Relief.

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

Issue No. 1 : No

Issue No.2 : Discussed

Issue No.3 : No

Relief. : Petition is partly allowed per operative part of award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner was engaged as casual worker in the month of August, 1995. The respondent in his reply has denied that petitioner had continuously worked from 1995 to 2003 as claimed by the petitioner. Averments made in the claim petition reveals that petitioner was initially engaged on muster roll daily wage basis as beldar/DPL in August, 1995 in the office of Agriculture Department Salooni, District Chamba, H.P. where he worked upto 2003 and his services were terminated by the department in July, 2003. In support of his name petitioner has relied upon statement showing detail of mandays which showed that from 1995 to 2013 petitioner had been working continuously whereas his services were terminated by the respondent/department earlier in July, 2003 which goes to show that despite termination order followed by a favourable Award dated 16.2.2011 passed in Reference No. 35/2008 Ex. PW1/B the petitioner was reengaged as consequence of award aforesaid. It is evident from earlier Award as referred to above that petitioner had worked from 1995 to 24th July, 2003 meaning thereby that a period of about eight years had elapsed when his services were terminated ignoring regularization policy of State of H.P. for which petitioner rendered service of eight years. In letter dated 7th July, 2014 Ex. RW1/B, claimant/petitioner is held entitled for seniority and continuity from the date of his initial engagement i.e. August, 1995 as per mandays statement petitioner had completed six years on July, 2003 and as per Award passed by this Court he had entitled to continuity from August, 1995 who completed eight years on 31.12.2003 for regularization in accordance with government policy dated 9.6.2006. The observations in this letter Ex. RW1/B from Director of Agriculture, H.P. to The Additional Chief Secretary (Agr.) to the Govt. of H.P. clearly shows that since the petitioner had not completed eight years of his services, his services were illegally terminated by the respondent. He was engaged in the period he performed duty is to be regularized for the purposes of continuous service. It may not be erroneous to mention here that petitioner been shown to have worked from 1995 to 2003 in Ex. P1. The close scrutiny of this document further revealed that the petitioner had worked from 1995 to 2003 and thereafter reengaged in 2011 and worked till 2013. In the statement in cross-examination, petitioner has clearly admitted that he worked with the department of agriculture. He further disclosed that in pursuance to Award dated 16.2.2011 Ex. PW1/B claimant/petitioner had joined on 4.3.2011. He has clarified that he had given joining report with Subject Matter Specialist, Department of Agriculture, Salooni, District Chamba, H.P.

12. The grievance of the claimant/petitioner as can be gathered from averment made in the claim petition remain that he has never been charge-sheeted or any disciplinary action had been

taken against him and was ignored promotion and not regularized in service. Despite the fact that he has worked more than eight years it was clearly mentioned in the claim petition that respondent in not regularizing service amounted to unfair labour practice as was also evident from Award dated 16.2.2011 as mentioned in para no.22 that provided, It is thus crystal clear that the respondents did have ample work with them. Rather than seeking approval for regularizing the petitioner ex-post facto sanction the respondents retrenched the services of the petitioner. It is nothing but a colorable exercise of power and as such can be termed to be an “unfair labour practice” under the provisions of the Act.

13. In the bare circumstances from testimony of petitioner or both coupled with documents on record, it is not established that petitioner had been regular employee of respondent since 1995 which had been discontinued when his services were illegally terminated on 21.7.2003 followed by reference of appropriate govt. and direction of this Tribunal/Court of reinstatement in pursuance to he was engaged on 4.3.2011. There is nothing in evidence from the respondent side which disentitles relief sought for more so Ex. RW1/A Shri Anil Kumar Saklani, Dy. Director, Agriculture, District Chamba, H.P. while filing affidavit has not seriously repudiated the claim of the petitioner who has admitted in cross-examination that according to Ex. PW1/B petitioner has been given benefit of seniority and continuity in service. In view of foregoing discussions demand raised by claimant/petitioner vide notice dated 12.10.2012 qua regularization of his daily wage service w.e.f. 1.4.2004 from Dy. Director, Agriculture, Chamba is legal and justified who is entitled for all the consequential benefits during these period including other consequential benefits from respondent. Accordingly, issues no.1 and 2 are decided in affirmative in favour of petitioner and against the respondent.

ISSUE NO.3

14. Ld. Dy. D. A. representing respondent has not seriously contended in what manner the claim petition is not maintainable. Needless to mention that petitioner was aggrieved and thereafter when he sought employment in continuity the period for which he remain unemployed was also be regularized after eight years of regular service and petitioner was entitled for all consequential benefits. Accordingly, issue no.3 is answered negative in favour of petitioner and against the respondent.

RELIEF

15. As sequel to my findings on foregoing issues, accordingly, claim of petitioner is hereby allowed and the respondent is directed to regularize the services of petitioner w.e.f. 1.1.2004 as per policy governing daily wagers as framed by State Govt. and operative from time to time. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits. The parties, however, shall bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 382/2015

Date of Institution : 18.08.2015

Date of Decision : 22.12.2016

Shri Moti Singh s/o Shri Beli Ram, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. *...Petitioner*

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *...Respondent*

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

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Moti Singh S/O Shri Beli Ram, R/O Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 02.02.2012 regarding his alleged illegal termination of service during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Moti Singh S/O Shri Beli Ram, R/O Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying 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 aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1994 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be

counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service w.e.f. month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of

petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02.02.2012 qua his termination of service during September, 2004 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP*.
5. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
6. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,30,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 who continuously worked till 2004 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division Chamba District and remained engaged from 1994 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 178 days in the year 1994, 140 days in 1995, 134 days in 1996, 120 days in 1997, 119 days in 1998, 109 days in 1999, 101 days in 2000, 118.5 days in 2001, 62 days in 2002, 119 days in 2003 and 53 days in 2004 and thus a total of his service in 1994 to 2004 in 11 years he had worked for 1253 ½ days in his entire service period. Be it noticed that except the years 1995 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 53 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Id. Authorized Representative of petitioner, Id. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that „**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**’. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the

industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case,

the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1253 ½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **7 ½ years** i.e. demand notice was given on 02.02.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 48 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,30,000/- (Rupees one lakh thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,30,000/- (Rupees one lakh thirty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of December, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 245/2015

Date of Institution : 10.09.2015

Date of Decision : 22.12.2016

Smt. Bimla Devi w/o Shri Bansi Lal, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ...Petitioner.

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...Respondent.

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

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

Whether the industrial dispute raised by the worker Smt. Bimla Devi W/O Shri Bansi Lal, R/O Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 08.05.2012 regarding her alleged illegal termination of service during September, 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Bimla Devi W/O Shri Bansi Lal, R/O Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying 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 aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1994 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of

September, 2004. She further prayed for reinstatement in service w.e.f. month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 03.3.2016 for determination which are as under:

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP*.
2. Whether termination of the services of petitioner by the respondent w.e.f. September, 2004 is/was illegal and unjustified as alleged? ... *OPP*.
3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
5. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of May, 1994 who continuously worked till 2004 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from May, 1994 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her

service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 31 days in the year 1994, 54 days in 1997, 60 days in 1999, 125 days in 2000, 87 days in 2001, 114 days in 2002, 83 days in 2003 and 105 days in 2004 and thus a total of her service in 1994 to 2004 in 8 years she had worked for 659 days in her entire service period. Be it noticed that she had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 105 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and

services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the

respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/ Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would

certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the

Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellanteemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view

all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 659 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven and half years** i.e. demand notice was given dated nil. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 46 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**.

21. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said

amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 397/2015

Date of Institution : 10.09.2015

Date of Decision : 22.12.2016

Miss Veena d/o Shri Hoshiyar Chand, r/o Village Rusmus, P.O. Sural Tai, Tehsil Pangi,
District Chamba, H.P. *...Petitioner.*

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba,
H.P. *...Respondent.*

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

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Miss Veena D/O Shri Hoshiyar Chand, R/O Village Rusmus, Post Office Sural Tai, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar Tehsil Pangi, District Chamba, H.P. vide demand notice dated 3.4.2012 regarding her alleged illegal termination of service during October, 2003 suffers from delay and laches? If not, Whether termination of the

services of Miss Veena D/O Shri Hoshiyar Chand, R/O Village Rusmus, Post Office Sural Tai, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar Tehsil Pangi, District Chamba, H.P. during October, 2003 without complying 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 aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1998 who continuously worked till October, 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 21 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of October, 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2003. She further prayed for reinstatement in service w.e.f. month of October, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1998 to October, 2003 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2006 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits

denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination which are as under:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 3.4.2012 qua her termination of service during October, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP*.
2. Whether termination of the services of petitioner by the respondent w.e.f. October, 2003 is/was illegal and unjustified as alleged? ... *OPP*.
3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
6. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of May, 1998 who continuously worked till 2003 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from May, 1998 to October, 2003. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand

notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 166.5 days in the year 1998, 113 days in 1999, 152 days in 2000, 73 days in 2001, 102 days in 2002 and 60 days in 2003 and thus a total of her service in 1998 to 2003 in 6 years she had worked for 666 ½ days in her entire service period. Be it noticed that except the years 1999 to 2003 she had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 60 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was

terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. *Ld. Authorized Representative* for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. *Ld. Authorized Representative* for petitioner has contended that after petitioner's termination in October, 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of *Ld. Authorized Representative* of petitioner, *ld. Dy. D.A. for the State* has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, *Ld. Dy. D.A. for State* has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, *Ld. Authorized Representative* for the petitioner has relied upon the judgment of Hon'ble Apex Court

titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing**

Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court thatworkman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellanmployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 666 ½ days as per mandays chart on record and that the services of petitioner were disengaged in October, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 3.4.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 33 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25**

(SC). The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**.

21. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of December, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 485/2015

Date of Institution : 09.11.2015

Date of Decision : 22.12.2016

Shri Roop Singh s/o Shri Dhan Ram, r/o Village Kanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. ...Petitioner.

Versus

Executive Engineer, H.P.P.W.D. Division Killar, 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, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Roop Singh S/O Shri Dhan Ram, R/O Village Kanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 28.05.2012 regarding his alleged illegal termination of services during September, 2005 suffers from delay and latches? If no, Whether termination of the services of Shri Roop Singh S/O Shri Dhan Ram, R/O Village Kanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. during September, 2005 without complying 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 aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by

the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003, Mohan Lal in 1990 and Dev Raj in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service w.e.f. month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2000 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2005 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise

and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Demand Notice Ex. PW1/B and Ex. PW1/C copy of order and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of workers, copy of orders/awards, Ex. RW1/D1 to Ex. RW1/D4 and closed the evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.2.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 28.5.2012 qua his termination of service during September, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP*.
2. Whether termination of services of the petitioner by the respondent during September, 2005 is/was illegal and unjustified as alleged? ... *OPP*.
3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : No

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed awarding compensation Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS**ISSUES NO.1 TO 3**

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till September, 2005 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to September, 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-

examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 137.5 days in the year 1997, 153 days in 1998, 83 days in 1999, 110 days in 2000, 95 days in 2001, 143 days in 2002, 125 days in 2003, 99 days in 2004 and 47 days in 2005 and thus a total of his service in 1997 to 2005 in 9 years he had worked for 992 ½ days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 47 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2005 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for

more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Id. counsel*, *Id. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *Id. counsel* for petitioner, *Id. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act- Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-

Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. counsel for claimant/petitioner has relied upon the judgment of Hon^{ble} Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon^{ble} Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Id. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by

reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 9 years and actually worked for 992 ½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 28.05.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 503/2015

Date of Institution : 09.11.2015

Date of Decision : 22.12.2016

Shri Dhian Singh s/o Shri Chhuni Lal, r/o Village Rusmas, P.O. Sural, Tehsil Pangi,
District Chamba, H.P. *...Petitioner*

Versus

Executive Engineer, I.&P.H/H.P.P.W.D. Division Killar, 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, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Dhian Singh S/O Shri Chhuni Lal, R/O Village Rusmas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 19.12.2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Dhian Singh S/O Shri Chhuni Lal, R/O Village Rusmas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying 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 aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1993 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no

opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service w.e.f. month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1993 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2003 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Demand Notice Ex. PW1/B and Ex. PW1/C copy of reply to demand notice, Ex. PW1/D copy of order and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of workers, copy of orders/awards, Ex. RW1/D1 to Ex. RW1/D4 and closed the evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.2.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19.12.2011 qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP*.
3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : No

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed awarding compensation Rs.1,25,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have

worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 122 days in the year 1994, 99 days in 1995, 97 ½ days in 1997, 84 days in 1998, 107 days in 1999, 114 days in 2000, 139 days in 2001, 150 days in 2002, 136 days in 2003 and 107 days in 2004 and thus a total of his service in 1994 to 2004 in 10 years he had worked for 1155 ½ days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 107 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in crossexamination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble

Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing

the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State

Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting

an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that

workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1155 ½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 19.12.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 504/2015

Date of Institution : 09.11.2015

Date of Decision : 22.12.2016

Shri Thakur Chand s/o Shri Rattan Raj, r/o Village Ghanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. *...Petitioner.*

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, 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, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Thakur Chand S/O Shri Rattan Raj, R/O Village Ghanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 26.12.2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Thakur Chand S/O Shri Rattan Raj, R/O Village Ghanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying 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 aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1989 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Mohan Lal who appointed in 1990, Chunku Ram in 2000, Budhi Ram in 2003, Dev Raj in 2004 and Suraj Ram. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service w.e.f. month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1989 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2000 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1989 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the

claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Demand Notice Ex. PW1/B and Ex. PW1/C copy of reply to demand notice and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of workers, copy of orders/awards, Ex. RW1/D1 to Ex. RW1/D4 and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.2.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 26.12.2011 qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of services of the petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP*.
3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : No

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed awarding compensation Rs.1,25,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1989 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1989 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 28 days in the year 1989, 59 days in 1990, 88 days in 1991, 114 days in 1992, 101 days in 1993, 115 days in 1994, 139 days in 1995, 137 days in 1996, 99 days in 1997, 78 days in 1998, 104 days in 2003 and 105 days in 2004 and thus a total of his service in 1989 to 2004 in 12 years he had worked for 1030 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 105 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1989 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wage privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied

to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court

titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellanteemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Id. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance

of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of „Last come First go“ was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 12 years and actually worked for 1030 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 26.12.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the

petitioner on the ground of limitation rather on the basis of guidelines of Hon^{ble} Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 94/2014

Date of Institution : 26.02.2014

Date of decision : 22.12.2016

Shri Kuldip Singh s/o Shri Swarn Singh, r/o VPO Bhadera, Tehsil Haroli, District Una, H.P.
...Petitioner.

Versus

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

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

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kuldip Singh, S/O Shri Swarn Singh, R/O V.P.O. Bhadera, Tehsil Haroli, District Una, H.P. during September, 2010 by the Divisional Forest Officer, Una Forest Division, Una, District Una, 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. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition revealed that claimant/petitioner was engaged as daily labourer since 01.1.1995 on muster roll basis who continuously worked upto 30th September, 2010 when his services were illegally terminated by the respondent orally. The petitioner alleges that he had worked for more than 240 days in each completed year of service and thus management had arbitrarily terminated his service without following procedure envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) moreso his juniors namely Gurmit Singh s/o Mehnga Ram, Prem Kumar s/o Gurdas Singh, Sohan Singh s/o Harbans Singh, Sanjeev Kumar s/o Shri Sardari and Balwant Singh s/o Shri Berru Ram were retained in service. The grievance of the petitioner also remains that he had worked satisfactory with the respondent but his service had been terminated illegally in hire and fire manner which constituted unfair labour practice on the part of the respondent. It is also the grievance of the petitioner that out of five persons named in para no. 3 of the claim petition the services of three persons have been regularized. It is also alleged that respondent while terminating services of petitioner did not serve notice under Section 25-F of the Act or compensation in lieu thereof. In view of the violation of the provisions of Section 25-F (a) the termination was illegal and unfair. The petitioner claims reinstatement with full back wages from 30.9.2010.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and delay and laches. On merits denied that petitioner was enrolled as daily wage labour with respondent w.e.f. 01.1.1995 rather petitioner was engaged as a casual labour for seasonal work in May, 2001 and that petitioner remain engaged intermittently subject to availability of work and funds. It is emphatically denied that petitioner had completed 240 days. Averment made in the reply revealed that the persons namely Gurmeet Singh s/o Mehnga Ram, Prem Kumar s/o Gurdass Singh, Sohan Singh s/o Harbans Singh, Balwant Singh s/o Beeru Ram were senior to the petitioner who had completed 240 days in each calendar year and fulfilled criteria for regularization and thus there was no violation of provisions of Section 25-G of the Act. It is also contended that nursery was seasonal in nature and labourer were engaged on bill basis as

per availability of funds and work. The case of the respondent also revealed that petitioner joined his duties as per own convenience and that petitioner left the work of his own sweet will who did not report for duty thereafter. Since petitioner is alleged to have abandoned the work himself, the question of termination of the services of petitioner did not arise. It is also contended that workers had regularized who had completed 240 days. It has also been contended that petitioner was never terminated by the respondent/department and no persons junior to the petitioner were engaged on work in place of petitioner. As such, there was no cause of action to file the present claim and the petitioner was again started to work with the respondent on bill basis as per availability of work w.e.f. 13.2.2014. Accordingly, petition was sought to be dismissed.

5. The petitioner did not file any rejoinder as statement of ld. counsel of petitioner was recorded on 9.12.2015.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Raj Kumar Dogra, the then Divisional Forest Officer, Una as RW1, tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B, copies of muster rolls Ex. RW1/C1 to C7 and seniority list of daily wage Ex. RW1/D and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 27.04.2015 for determination:

1. Whether termination of the services of the petitioner by the respondent during September, 2010 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 petition is not maintainable in the present form as alleged? ... *OPR*.
4. Whether the petition is bad on account of delay and laches on the part of claimant as alleged? ...*OPR*.

Relief.

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

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : No

Relief: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Perusal of mandays chart Ex. PW1/B reveals that petitioner had worked only for 85 days in the year 2001, 28 days in 2002, 58 days in February and March 2005 and 2006. The said document stands repudiated with Ex. RW1/B which shows that petitioner had worked till 2007 and not worked for 240 days in any of the preceding years including year of termination.

12. Contrary to claim of petitioner, respondent has relied upon mandays chart as well as wage bill so as to prove that petitioner after leaving job in 2007 had been engaged again on bill basis. By no stretch of imagination, petitioner could be stated to have worked till September, 2010 when his services were allegedly terminated by respondent/department. Significantly, the deviation on the date of joining as mandays Ex. PW1/B relied upon by the petitioner shows that petitioner had been engaged in May, 2001 when he had worked 31 days whereas petition shows that he had been engaged on 1.1.1995 which goes to show that petitioner claims to have started working w.e.f. 1.1.1995. It is also evident that petitioner was not working with respondent after February, 2007 and in the said year he had worked merely for 7 days, thus, there could no question of illegal termination on account of petitioner having completed 240 days as envisaged under Section 25-F of the Act. As such, no notice was required to be served upon him before terminating the services of the petitioner.

13. It is also evident from seniority list of workers as on June, 2006 revealed that Gurmeet Singh, Prem Singh and Sohan Singh figured in the seniority list at serial nos. 13, 17 & 18 respectively and one Madan Singh was appointed in 1.1.1995. If petitioner had been appointed or engaged in seasonal work it was to be reckoned from May, 2001. As such, the persons named to be junior of petitioner were factually senior to him and that services for these persons retained and regularized and there could be no violation of either Section 25-G and 25-H of the Act. Thus wage bill Ex. RW1/C1 to Ex. RW1/C7 also show that persons named in the wage bill had been engaged in 2006 particularly Ex. RW1/C1 shows that petitioner was engaged in July, 2001.

14. To prove his case petitioner has deposed on oath as maintained in the claim petition and proved his affidavit Ex. PW1/A. In cross-examination he admitted that work of forest department was seasonal and he had been removed from service in 2010. He has also denied that Gurmeet, Prem Kumar, Sohan Singh, Sanjeev and Balwant were engaged prior to him but factually the documents on record established that petitioner has joined in 2001 whereas other persons mentioned in the claim petition were engaged in 01.01.1994 and 01.01.1995. Thus, oral as well as documentary evidence on record belies the plea of the petitioner that he had been engaged in 01.1.1995 rather there is ample evidence on record to show that petitioner had been engaged in 2001 who was junior to all the five persons mentioned in claim petition. Repudiating the evidence led by the petitioner, Shri Raj Kumar Dogra (RW1), respondent stepped into witness box deposed on oath as maintained in reply who had proved mandays chart Ex. RW1/B, copies of muster rolls Ex. RW1/C1 to Ex. RW1/C7 and seniority list Ex. RW1/D. Nothing in cross-examination of the respondent as has been elicited by Id. Authorized Representative which would show that documents proved in cross-examination in which reflecting correct numbers qua engagement of petitioner in 2001. He has admitted that department had maintained seniority list of workers. It is contended by the Id. Authorized Representative of petitioner that name of claimant/petitioner has not been incorporated in seniority list Ex. RW1/D. On the other hand, Id. Dy. D.A. for respondent pointed out that casual workers who had engaged till 1st January, 1996 and their names have been entered

but claimant/petitioner had since joined in 2001 and his name did not figure in the said seniority list. Otherwise also with the aid of seniority list no adverse inference could be drawn rather petitioner continues to the junior workers as mentioned in the claim petition as stated above. In view of foregoing discussions, it may not be erroneous to mention here that reference received from appropriate government provides for termination of service of petitioner in 2010 by Divisional Forest Officer, Una rather petitioner had stopped coming for job after 2007 to 2010 when he merely worked for 07 days. Thus, from March, 2008 to September, 2010 petitioner has neither worked with the respondent/department. Accordingly, the petitioner is not entitled for any relief as prayed by him in his statement of claim. Thus, both these issues are answered against the petitioner and in favour of the respondent.

ISSUE NO. 3

15. Thus, the petition is held to be not maintainable as the petitioner has failed to establish violation of any of the provisions of the Industrial Disputes Act by respondent/department who is also held not entitled even compensation in lieu of service rendered by him. Hence, this issue is answered against the petitioner and in favour of respondent.

ISSUE NO. 4

16. Ld. Dy, D.A. for respondent/department has contended with vehemence that claim petition is bad on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2010 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of conciliation proceeding before authority under Act, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when his services were illegally terminated. Thus, the petition filed by petitioner cannot be stated to be bad on account of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

17. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of December, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 274/2015

Date of Institution : 13.07.2015

Date of Decision : 23.12.2016

Shri Devi Lal s/o Shri Shiv Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District
Chamba, H.P. *...Petitioner*

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, 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, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Devi Lal S/O Shri Shiv Chand, R/O Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 18.07.2012 regarding his alleged illegal termination of services during September, 2003 suffers from delay and laches? If not, Whether termination of the services of Shri Devi Lal S/O Shri Shiv Chand, R/O Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2003 without complying 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 aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1991 who continuously worked till October, 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing any one month notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner while respondent had illegally terminated his service. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. Grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' as envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner and who are still in service with the respondent namely Hukam Chand who in 1997, Chunku Ram in 2000, Budhi Ram in 2003, Dev Raj in 2007, Sher Singh in 2011 and Raj Kumar in 2001. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon his and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2003. He further prayed for reinstatement in service w.e.f. month of October, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to October, 2003 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.1999 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been

denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C1 to Ex. RW1/C4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30.09.2015 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during September, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP*.
2. Whether termination of services of the petitioner by the respondent during September, 2003 is/was illegal and unjustified as alleged? ...*OPP*.
3. If issue no. 1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

<i>Issue No.2 :</i>	No
<i>Issue No.3 :</i>	Discussed
<i>Issue No.4 :</i>	Yes
<i>Relief. :</i>	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has proved on record his affidavit Ex. PW1/A stipulating therein that he had worked on muster roll on daily wage basis beldar without any appointment letter from June, 1995 till September, 2004 and in between, petitioner had been engaged and reengaged by giving fictional breaks so that he did not complete 160 days preceding 12 months in tribal area as well as for regularization of his services. Before accepting the statement made by the petitioner, it would be relevant to refer to mandays chart prepared by Executive Engineer, Killar Division, HPPWD Killar (Pangi) which shows that petitioner had worked from 1995 to 2004. A bare glance at the mandays chart would reveal that petitioner had worked for 72 days in the year 2004 and prior to it 120 days in the year 2003 but he had not continuously worked for 160 days as in the year 2003 he had worked for 120 days. In the next year he remained without any work from November to May, 2004 and he was reengaged for period of 72 days i.e. 25 days in June, 28 days in August and merely 19 days in September. This evidence goes to show that the petitioner had not factually worked continuously for 160 days as claimed by him. Contrary to the claim of the petitioner as well as his affidavit Ex. PW1/A which shows that petitioner had worked from 1991 to 2004. Be it noticed that the reference received from appropriate government shows that petitioner had worked till September, 2003. If the petitioner had worked till 2003 how could he be shown to have worked till 2004, which falsified plea of petitioner and for said reason the reference is answered in negative because petitioner till the date of order of petition, petitioner had not prayed for issuance for corrigendum and appears to be working till 2004 and not 2003. Delay of nine years in filing the demand notice cannot be stated to be fatal so as to negate the claim of petitioner in view of various judgments of Hon'ble Apex Court in which it has been held that delay in raising demand notice would not affect the right of compensation as this court has to look into merits of this case independently. Since mandays chart Ex. RW1/B manifestly shows that petitioner had not worked for 160 days in preceding 12 months and his services had been terminated, there was no requirement of issuance of any notice envisaged under Section 25-F of the Industrial Disputes Act. Accordingly, it is held that there is no violation of Section 25-F of the Industrial Disputes Act more particularly provisions of Section 25-B of the Industrial Disputes Act was not attracted in this case. Similarly, provisions of Sections 25-F of the Industrial Disputes Act, could not be stated to have been violated as it has not been proved by the petitioner. Be it noticed that there is no iota of evidence on record establishing retention of juniors or their regularization rather petitioner has failed to bring on record any evidence such as seniority list of workers working with respondent.

12. Ld. Dy. D.A. for respondent has pointed out that petitioner has claimed to have worked till 2004 and his plea gets falsified from reference received from appropriate govt. He has also contended that there could be no explanation of delay as the petitioner continued to work much after 2003. As such, no conclusion can be drawn for holding delay and laches rather petitioner is

held to have worked much after 2003 and that his claim that notice for termination was issued much late is of no consequence on the merits of case and for similar reasons, petition is held to be not maintainable. Issue no.1 is decided as discussed, issues no.2 and 3 are answered negative and issue no.4 is answered in affirmative in favour of respondent and against the petitioner.

RELIEF

13. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

14. The reference is answered in the aforesaid terms.

15. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

16. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 104/2014

Date of Institution : 26.02.2014

Date of decision : 24.12.2016

Smt. Sonia w/o Shri Dev Raj, r/o Block No.3, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. *...Petitioner*

Versus

The Managing Director, M/S Terrace Pharmaceuticals (P) Ltd., Plot No. 3B(a), Phase-III, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. *....Respondent*

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

For the Petitioner : Sh. Vishal Awasthi, Adv.

For the Respondent : Sh. Anubhav Walia, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Sonia W/O Shri Dev Raj, R/O Block 3, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. w.e.f. 12.01.2013 (as alleged by workman) by the Managing Director, M/S Terrace Pharmaceuticals (P) Ltd., Plot No. 3B(a), Phase-III, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P., without complying 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 Exworker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition revealed that the services of petitioner who was engaged by the respondent as helper in December, 2007 had been removed from service on 12.1.2013 as petitioner was not allowed to join duties. It is alleged that when petitioner raised demand notice through registered letter to allow to her join duty her services had been terminated by verbal order dated 12.1.2013 as the petitioner at that time asked not come to the office. The case of the petitioner also remains that respondent had not served any show cause notice, charge sheet and at the same time, no retrenchment compensation had been paid under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, by not paying compensation as required by law and not issuing notice the act of respondent in terminating service was null and void. It is alleged that petitioner had completed 240 days in each calendar year. EPF was deducted regularly from salary every month but petitioner enquired about her EPF number which was never supplied and her services were terminated. The plea further remained that ever since termination petitioner had been unemployed and not gainfully employee from the date of her termination. Thus, petitioner was entitled for full back wages. Accordingly, petitioner prays for setting aside oral termination dated 13.1.2013 seeking direction to respondent to reinstate petitioner with full back wages, seniority, continuity in service and all other consequential service benefits. Thus, the petitioner further prays for payment of 18% amount deposited in EPF number per annum.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, suppression of material facts, petitioner however has not approached the court with clean hands, having no cause of action and estoppel. On merits, it has been denied that petitioner had not been allowed to join duty on 13.1.2013. The respondent claimed that legal notice was served upon petitioner calling upon to join duty when she joined on duties and demanded clearance of her payment from authority by making full and final payment to the petitioner by the respondent. It has been emphatically denied that the services of petitioner ever terminated by the respondent and thus the respondent did not remove petitioner from service and for said reason, there was no necessity of issuance of notice under provisions of Sections 25-F and 25-G of the Act. Thus, respondent claims to have paid full and final payment, the petitioner stopped attending office there was no necessity to serve any show cause as she had left the job of her own after receiving full and final payment. Thus, claim/petitioner had voluntarily abandoned the job and stop working and dues were paid as demanded by her. It is denied that respondent had violated provisions of Sections 25-B, 25-G and 25-H of Industrial Disputes Act and therefore there was no act of respondent which was arbitrary, discriminatory and unconstitutional. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, demand notice Ex. PW1/B, Payment slip Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Dilbag Singh, Accountant, M/s. Terrace Pharmaceuticals Pvt. Ltd.

as RW1, tendered/proved his affidavit Ex. RW1/A, authority letter Ex. RW1/B, EPF Statement of petitioner Mark-A and closed evidence.

7. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 01.05.2015 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent w.e.f. 12.1.2013 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? ...*OPR*.
4. Whether the petitioner has not approached the Court with clean hands 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 is estopped from filing claim petition by her act and conduct as alleged. If so, its effect? ...*OPR*.

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

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

REASONS FOR FINDINGS

ISSUES NO. 1, 2 AND 6

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. PW1 Smt. Sonia has stepped into witness box deposed on oath as maintained in the claim petition and also averred same in the affidavit Ex. PW1/A. Ex. PW1/B is a demand notice whereas payments slip the affidavit on record filed by petitioner shows that she had remain employed as helper from December, 2007 to 12.1.2013 and on 13th January, 2013 she was not entered premises of the respondent company so as to perform her duties. She has further stated that no notice has been served upon her before termination and thus there was violation of Section 25-F of the Act.

12. The case of respondent on the other hand remains that respondent had paid full and final payment to the petitioner. The case of the petitioner remains that when she demanded EPF statement, the respondent was annoyed and terminated her services. Cross-examination of petitioner reveals that she had studied 5th standard and had not been appointed by issuance of any appointment letter. She has admitted that Ex. PW1/B was demand issued to the company so explained to her that she had signed all the documents. The question which crops up for adjudication with regard to controversy between the parties remains if the petitioner had settled her account with the respondent and left the respondent company or if she had abandoned the job and she did not join office. It has rightly been contended by Id. counsel for petitioner that abandonment in question of fact to be proved but conduct of respondent in issuance of notice to the petitioner can be inferred. Although RW1 the authorized representative had maintained on oath that notice was issued to petitioner but that notice had not placed on record. The plea of serving of notice preceded by abandonment of job of the petitioner, petitioner denied in cross-examination that she had not stated in respondent company that she would not work and thus the cross-examination of the petitioner also remains consistent or point of her termination and giving of any employment by the respondent. At the same time respondent company had also not issued any show cause notice under Section 25-F of the Act and in that situation when no show cause notice was served or no charge-sheet had been issued, service of petitioner had not been removed in accordance with law as petitioner had completed 240 days in absence of any record qua show cause notice, charge sheet or any absence of proper proceeding for termination of the services of petitioner, it would be unsafe to hold that the services of petitioner had been legally terminated. As such, when respondent was under no obligation to follow the provisions of Section 25-F of the Act which mandates that issuance of notice as was not done by the respondent, it is held that respondent has violated the provisions of Section 25-F of the Act. No evidence has been led by the respondent to prove that any payment as full and final has been made to petitioner and proof of payment slip of wages does not prove the signature of petitioner who had been allegedly paid that amount. The claimant/petitioner had stipulated in her claim petition in para no.12 as well as affidavit that she was not gainfully employed nowhere from the date of her alleged termination and that she was unemployed from the date of her illegal termination, on this point no question has been asked in cross-examination by the Id. counsel for respondent. Thus, this fact goes un rebutted that petitioner was unemployed ever since the date of her termination i.e. 13.1.2013. At the same time, while repudiating the evidence of the petitioner, respondent has nowhere proved that petitioner was employed as such petitioner shall be entitled for full back wages, seniority and continuity in service. Accordingly, issues no.1 and 2 are decided in affirmative petitioner will be entitled for all consequential service benefits. The termination of the services of petitioner by respondent w.e.f. 12.1.2013 was also held to be illegal and for similar reasons, it cannot be stated that petitioner had no cause of action. Issue no.6 is decided in negative in favour of petitioner and against the respondent.

ISSUE NO.3

13. Since service of petitioner had been illegally terminated by the respondent by verbal order, claim petition cannot be stated that it is not maintainable. Hence, this issue is decided in favour of petitioner and against respondent.

ISSUE NOS 4 AND 5

14. These issue were not pressed by ld. counsel for respondent at the time of arguments. There is nothing on record of case to show that petitioner had not come to the court with clean hands as well as petitioner had no locus standi to sue the present case. Thus, vague plea of respondent being devoid of merit deserves to be rejected. Accordingly, issues in hand are answered in negative.

ISSUE NO.7

15. Ld. counsel for respondent has contended that petitioner has estopped from filing present petition by her act and conduct. It is not specifically averred as to what act and conduct was filed present claim petition under Section 10 of the Act more so when it is admitted by the respondent that petitioner had worked w.e.f. December, 2007 to 12th January, 2013 with the respondent and due to her termination from service she would certainly approach the court for redressal of grievance and thus principle of estoppel from filing of present petition by her act and conduct did not apply. Issue no. 7 is accordingly decided negative in favour of petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of her illegal termination with **full back wages** as well as other consequential service benefits. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,

Ref No. : 105/2014

Date of Institution : 26.02.2014

Date of decision : 24.12.2016

Shri Partap Singh s/o Shri Milap Singh, r/o House No.65, Block No.3, Industrial Area
Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. ...Petitioner

Versus

The Managing Director, M/S Terrace Pharmaceuticals (P) Ltd., Plot No. 3B(a), Phase-III, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. Respondent

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

For the Petitioner : Sh. Vishal Awasthi, Adv.

For the Respondent : Sh. Anubhav Walia, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Partap Singh S/O Shri Milap Singh, R/O House No.65, Block 3, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. w.e.f. 27-10-2012 (as alleged by workman) by the Managing Director, M/S Terrace Pharmaceuticals (P) Ltd., Plot No. 3B(a), Phase-III, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P., without complying 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 Ex-worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as stipulated in the claim petition are that petitioner was engaged as helper by the respondent in December, 2007 where he continued to worked without any break upto 27th October, 2012 and thereafter on 28th October, 2012 petitioner was not allowed to join duty when a demand notice was served upon the respondent through registered letter to allow him to join duty. It is alleged that before terminating the services of petitioner, when he was not served any show cause notice, charge sheet and at the same time retrenchment compensation had been not paid to the petitioner under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) and thus not paying retrenchment compensation or wages of one month's in lieu thereof, termination was illegal and null and void moreover petitioner was completed 240 days in each calendar year. The petitioner also contends that principle of 'Last come First go' has not been followed and thus retaining junior to petitioner Section 25-G of the Act has also been violated. It further transpires from the claim petition that during employment, petitioner had depositing EPF regularly from his salary but the respondent had never supplied him any EFP account number. Thus, petitioner/claimant remained unemployed from date of his termination. The petitioner prays for setting aside the termination order. The grievance of petitioner thus that the act of employer while terminating the services of petitioner orally without any notice was illegal and petitioner was to be reinstated with back wages with all consequential benefits including EPF number with interest of 18% per annum.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, suppression of material facts and that petitioner has not approached the court with clean hands, cause of action and estoppel On merits, it is denied that petitioner had not been allowed to join work rather petitioner of his own stopped attending duty whereupon respondent served a registered notice to petitioner calling upon him to join duties to which

petitioner did not respond. The petitioner was not willing to join duties and further requested the respondent to clear his payments. Therefore, respondent had paid full and final payments vide receipt dated 4.10.2012 and after 4.10.2012 the petitioner stopped attending office there was no necessity to serve any show cause as he had left the job of his own and after receiving full and final payment. Thus, claim/petitioner had voluntarily abandoned the job and stopped working and all his dues were paid as demanded by him. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, demand notice Ex. PW1/B, Payment slip Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Dilbag Singh, Accountant, M/s. Terrace Pharmaceuticals Pvt. Ltd. as RW1, tendered/proved his affidavit Ex. RW1/A, authority letter Ex. RW1/B, EPF Statement of petitioner Mark-A and closed evidence.

7. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 01.05.2015 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent w.e.f. 27.10.2012 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 in the present form? ...*OPR.*
4. Whether the petitioner has not approached the Court with clean hands 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 is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*

Relief.

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

Issue No.1 : No

Issue No.2 : Discussed

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : Yes

Issue No.6 : Yes

Issue No.7 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner/claimant was employed as helper with the respondent who was engaged in December, 2007 and continued to work till 27.10.2012. The respondent in its reply disputes that he had not allowed to petitioner to join his duties on 28.10.2012. The case of the respondent further revealed that registered notice was served when petitioner stopped coming to office. On inquiry petitioner disclosed that he was not willing to work and his accounts/payments to be cleared. Ex. R1 is a receipt signed by petitioner in full and final payment received by him from respondent which receipt further stipulates that no other payment was remained due. As such, this document supports the plea of respondent that petitioner had abandoned the job but there is nothing corresponding evidence on record to show that respondent had factually issued any registered notice in pursuance to the petitioner had appeared and demanded his dues. Ld. counsel for the petitioner has contended with vehemence that plea of abandonment has to be proved like a fact and mere allegation that petitioner has abandoned was not support rather respondent ought to have issued legal notice calling upon him to explain his position and only thereafter needful procedure was to be followed and petitioner could be removed.

12. Stepped into witness box as PW1 has deposed on oath as maintained in affidavit Ex. PW1/A. He has maintained that when petitioner demanded EPF number he was asked to leave the job. The case of the petitioner was also remained that respondent had not followed any procedure when his services had been terminated. On the other hand, RW1 Shri Dilbagh Singh on behalf of respondent company has maintained that there was no necessity to serve any show cause notice or petitioner had not worked for 240 days from the date of his termination. It further remains the case of petitioner that he demanded EPF number respondent had made full and final payment. Ex. PW1/C is the wage register showing details of wages being paid and deduction on account of petitioner as well as other persons mentioned therein. Cross-examination of RW1 reveals that he has been authorized vide Ex. RW1/B to conduct the case on behalf of respondent company. PW1 has clearly stated that when petitioner was engaged, no letter has been issued to him although thus witness has been authorized by the respondent company to conduct the case about material facts. Thus, from foregoing evidence it is established that petitioner had worked with respondent company from December, 2007 to 27.10.2012 but he was not terminated or retrenched from service rather petitioner started absenting from duties whereupon he was called and by the respondent company and his final dues or his request were paid which duly acknowledged Ex. R1 as stated above when once the petitioner had settled his dispute qua dues payable by the respondent, nothing remains to be paid by the respondent and claim of petitioner to have been terminated could not be stated to be based on notice. Accordingly, issue no.1 is answered in negative in favour of respondent and against the petitioner. Issue no.2 is decided in favour of respondent and against the petitioner.

ISSUE NO. 3

13. This issue was not pressed by the ld. counsel for respondent at the time arguments. Otherwise also once the petitioner had received of his all dues from the respondent how the claim petition was maintainable. Accordingly, issue no.3 is answered in favour of respondent and against the petitioner.

ISSUE NO.4

14. Ld. counsel for respondent contended with vehemence that petitioner had not approached the court with clean hands as he has already received full and final payment from the respondent company. This issue is answered in negative in favour of respondent and against the respondent.

ISSUE NO.5

15. It appears that when the services of the petitioner had been disengaged, then he is at liberty to challenge his disengagement and he would succeed only if there is merit in his case. But in view of the findings on issue no.1 above, he has no locus standi to sue. Hence, this issue is decided against the petitioner and in favour of the respondent.

ISSUE NO.6

16. In view of the above issues no.1 and 2, it appears that the petitioner has no cause of action. Therefore this issue is decided against the petitioner and in favour of the respondent.

ISSUE NO.7

17. In view of the findings on the issues no. 1 and 3 above, it appears that the petitioner has himself absented from duty as well as received all the dues from the respondent company is hereby estopped from filing any claim alleging that his services were illegally terminated. Thus, findings on this issue in the affirmative, in favour of the respondent and against the petitioner.

RELIEF

18. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 335/2016

Date of Institution : 26.05.2016

Date of decision : 24.12.2016

Shri Kuldeep Kumar s/o Shri Man Singh, r/o Village Adhi, P.O. Bathri, Tehsil Dalhousie,
District Chamba, H.P. ...Petitioner

Versus

The Executive Officer, Municipal Council, Dalhousie, District Chamba, H.P.

....Respondent

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

For the Petitioner : Sh. Sushil Jamwal, Adv.

For the Respondent : Respondent exparte

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kuldeep Kumar S/O Shri Man Singh, R/O Village Adhi, P.O. Bathri, Tehsil Dalhousie, District Chamba, H.P. w.e.f. 09-07-2002 by the Executive Officer, Municipal Council, Dalhousie, District Chamba, H.P, who has worked as beldar on daily wages basis and has raised his industrial dispute after about 12 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 from 30-04-1998 to 08-07-2002 and delay of about 12 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. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Averments made in the claim petition revealed that petitioner was offered to work as daily wager beldar by the respondent w.e.f. 30.4.1998. Thereafter, petitioner had performed his duties sincerely and with the devotion and upto the satisfaction of his superiors as no complaint had been ever made against the working of petitioner. It is alleged that surprisingly on 10.6.2002, respondent had issued termination notice to the petitioner under Section 25-F of the Industrial Disputes Act, 1947 stated that the services of petitioner had been terminated w.e.f. 9.7.2002. Thereafter, petitioner had approached the Hon'ble Administrative Tribunal filing Original Application No. (D) 265/2002 which was disposed by the order of Hon'ble Tribunal on 22nd April, 2003 although the respondent had assured that the services of petitioner shall be reengaged as and when availability of work and funds. It is alleged that the action of respondent was illegal because the petitioner had been thrown out only on the ground that the work was not available with the

respondent. It is alleged that respondent had not paid retrenchment compensation at the time of termination of his services. It is further alleged that respondent had not followed the principle of 'Last come First go' as such many junior persons had been working under the different departments under the State of Himachal Pradesh. The petitioner thus prays for his re-engagement with all consequential benefits.

4. The respondent was duly served for 26.10.2016, but none had put in appearance on behalf of the respondent and hence the respondent was proceeded *ex parte*.

5. The petitioner while appearing as PW1 has reiterated the pleas raised by him in his claim vide Ex. PW1/A. The petitioner has unequivocally deposed that he worked with the respondent from 30th April, 1998 to 10.6.2002 and had completed 240 days in all the calendar years. His services were disengaged orally and certain persons junior to the petitioner had been retained by the respondent. The disengagement of the petitioner was thus against the statutory mandate of the provisions of Sections 25-F and 25-G of the Act. The un-rebutted testimony of the petitioner thus shows that he had completed 240 days prior to his termination and as such the non-compliance of the provisions of Section 25-F was indeed illegal in the eyes of law. The respondent was duty bound to have issued the notice so contemplated under Section 25-F, before dispensing his services. However nothing of this sort was done by the respondent. The action of the respondent management is thus violative of the provisions of Section 25-F of the Act.

6. Even otherwise there is one notice purported to have been issued to the petitioner by the respondent issued on 10.6.2002 disengaging the petitioner w.e.f. 9.7.2002 and further directing the petitioner to collect retrenchment compensation if any on 15.5.2002. The relevant para of provisions of Section 25-F of the Act is produced below for reference:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

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

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

7. It is clear from the reading of the Section that the requirement prescribed in Sub Section (a) and (b) is a condition precedent to retrenchment and failure to comply the same would render the impugned retrenchment invalid and inoperative. The provisions of sub section (a) and (b) are to precede the retrenchment and not to follow it. In *National Iron and Steel Company Ltd. vs. State of West Bengal*, (1967) II LLJ 23 (SC). The Hon'ble Supreme Court in a similar situation, where a notice dated 15th November, 1958 was issued to the workmen terminating the services of the workmen w.e.f. November 17, and directed him to collect one month's notice in lieu of notice on November 20 or thereafter had held manifestly the provisions of Section 25-F had not been complied with. The same happens to be the situation in the present case. This has obviously been done in the present case too, and therefore, the condition precedent for the retrenchment as

envisaged under Section 25-F of the Industrial Disputes Act, 1947 has not been fulfilled and this certainly invalidates the order of retrenchment itself. Clause (a) and (b) of Section 25-F are obligatory and create a condition precedent to retrenchment. Therefore, if retrenchment compensation is not paid before the workmen are asked to go, retrenchment order would be bad in law and invalid. Moreover the tender of compensation in order to be valid under Section 25-F should be of the precise amount and should be made simultaneously with the termination of the service. The fact that the employer wrote to the workmen to clear his account in the office will not amount to an offer of retrenchment compensation at the time of terminating his services. In this behalf support can be drawn from the judgment of the Hon'ble Punjab and Haryana High Court titled as *Kailash vs. Labour Court* (1998) III LLJ (Supp) 4 and a judgment of the Hon'ble Bombay High Court titled as *Managing Director, Bombay Film Laboratory Ltd. vs. L.G. Vasule* [(1998) 1 LLJ 208 (Bom)].

8. It has thus to be held that the impugned retrenchment is invalid and inoperative in the eyes of law. The disengagement of the petitioner is thus illegal and void in the eyes of law. It is consequently set aside.

9. In view of the foregoing discussions, the respondent/ management is directed to re-engage the petitioner forthwith. the petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. No back wages are being awarded in favour the petitioner as similar workmen who had approached this Court and whose references were even contested by the respondent, no back wages have been paid to them. The parties, however, shall bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

12. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of December, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

हिमाचल प्रदेश बारहवीं विधान सभा

अधिसूचना

शिमला-171004, 25 अप्रैल, 2017.04.26

संख्या:वि0स0:-विधायन-शपथ/1-2/2013.—भारतीय संविधान के अनुच्छेद 188 के अनुसरण में हिमाचल प्रदेश विधान सभा के लिए 36-भोरंज (आ0जा0) निर्वाचन क्षेत्र से उप-चुनाव में निर्वाचित सदस्य, डॉ० अनिल धीमान ने राज्यपाल महोदय द्वारा इस प्रयोजन हेतु जारी आदेश संख्या: वि0स0-विधायन-आदेश/1-50/83-1, दिनांक 17 अप्रैल, 2017 द्वारा नियुक्त, श्री बृज बिहारी लाल बुटेल, अध्यक्ष, हिमाचल प्रदेश विधान सभा के समक्ष दिनांक 25 अप्रैल, 2017 को (पूर्वाहन) शपथ ग्रहण की।

सुन्दर सिंह वर्मा,
सचिव,
हि0 प्र0 विधान सभा।

HIMACHAL PRADESH TWELFTH VIDHAN SABHA

NOTIFICATION

Shimla-4, the 25th April, 2017

No. VS-Legn.-Oath /1-2/2013.—In pursuance of Article-188 of the Constitution of India, Dr. Anil Dhiman elected Member of the Himachal Pradesh Legislative Assembly in Bye-election from (36- Bhoranj), before taking his seat, made and subscribed oath on the 25th April, 2017 before the Speaker, Shri Brij Behari Lal Butail, appointed in this behalf by the Governor vide Order No. VS- legn.-Order/1-50/83-1 dated on 17 th April, 2017.

SUNDER SINGH VERMA,
Secretary,
H.P. Vidhan Sabha.

TRANSPORT DEPARTMENT

NOTIFICATION

Shimla-02, the 19th April, 2017

No. TPT-C(9)-3/2013.—The Governor, Himachal Pradesh in exercise of the powers conferred by sub section 14(3) of the Himachal Pradesh Motor Vehicle Taxation Act, 1972 (Act No:4 of 1973) and all other powers enabling him in this behalf is pleased to exempt the vehicle No. HP-02-1595 which is registered in the name of Smt. Chander Kanta W/o Sh. Khem Singh R/o Village- Khilra Post Office Meramasit, Tehsil Sundernagar, District Mandi, Himachal Pradesh from the payment of Token Tax w.e.f. 01-10-2014 to 31-03-2017 levied under Section 3 of the Act ibid in public interest .

By order,
Sanjay Gupta,
Principal Secretary (Transport).

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, the April, 2017

No. FFE-B-F (5)-1/2017.—The Governor, Himachal Pradesh is pleased to approve new plantation strategy. The aim of the new strategy is to improve the survival percentage of plants in such a manner that the quality of forest in the State improves substantially.

Nursery raising will be treated as an activity separate from plantations in order to ensure that plants in nurseries are raised well in advance and plants of appropriate age, size and variety are available for plantation when required. Separate budget will therefore be provided for nursery raising.

The salient features of the new plantation strategy are as under:—

- (a) The nurseries will be established in advance to raise tall plants of two to four years of age or as may be required so that sufficient stock is available during the actual year of planting.
- (b) The nursery cost of raising plants will be calculated and recommended by expert committee to be constituted by the PCCF (HoFF) as is normally done. This cost will be split in different years and allocations of funds will be done each year accordingly.
- (c) The tall plants will be raised in different size poly bags and shifting will be done regularly as per the requirement till it attains the required height and vigor.
- (d) Some state level nurseries will also be established in key locations. These nurseries will develop various plant species which are useful for the communities. Some R&D will also be done here to develop better plants.
- (e) The entire data about availability of plants in nurseries will be available on official web portal of the department so that various divisions can source plants from available nurseries as per their requirement.
- (f) Plants will also be made available to other departments, NGO's private organizations & persons.
- (g) The plantation site will be fenced with barbed wire by using RCC/CC posts in areas near to roads and with wooden posts in areas away from the roads.
- (h) Cost norms will be developed for various types of plantations covering various plant species, density of plants existing in areas taken for plantation and requirement of fencing, watering etc.
- (i) These norms will be developed by committee of experts to be constituted by PCCF (HoFF). Thereafter these norms for various type of plantations and nurseries will be approved by the Government at the level of the Hon`ble Forest Minister.

By order,
TARUN KAPOOR,
Additional Chief Secretary (Forests).