



This is a digitally signed Gazette, to verify click here.

<http://rajpatrahimachal.nic.in>

राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 14 जुलाई, 2017 / 23 आषाढ़, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 01st July, 2017

No: Shram (A) 6-2/2017 (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 Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

<i>Sr. No</i>	<i>Reference/ Application</i>	<i>Title</i>	<i>Section</i>
1.	Ref.66/2013	Sh. Raju Ram V/s M/S Sohan Sons Shimla.	10
2.	Ref.13/2013	Sh.Rajinder Kumar V/s Ind Sphinx Parwanoo.	10
3.	Ref.02/2016	Sh. Pyare Lal V/S The DFO Rohru & Anr.	10
4.	Ref.140/2010	Army Public School Workers Union V/s Chairman APS Dagshai District Solan & Anr.	10
5.	Ref.86/2005	Sh.Shakti Chand & Others V/s M/S Gabrial India Ltd. Parwanoo District Solan & Anr.	10
6.	Ref.76/2016	Sh.Jitender Raj V/s Director Horticulture Shimla-2.	10
7.	Ref.62/2008	President Vigro & Tigaksha Kamgar Sangh & Ors. V/s Director (operations) M/S Tigaksha Metallic shogi District Shimla.	10
8.	Ref.60/2011	Workers Union V/S Base Corporation Ltd. Solan.	10
9.	Ref.100/2016	Sh. Baldev V/s XEN HPSEB Shimla.	10
10.	Ref.09/2017	Sh. Roop Ram V/s XEN IPH Kasumpti Shimla.	10
11.	Ref.122/2016	Sh. Rakesh Inder Nath V/s Commissioner MC Shimla.	10
12.	Ref.105/2016	Sh. Jai Chand V/S M/S Venus Remedies Ltd. Baddi..	10
13.	Ref.10/2017	Sh. Uttam Chand V/S XEN HPPWD Rampur.	10
14.	Ref.103/2016	Sh. Vineet Kumar V/s M/S Torrent Pharmaceuticals Ltd.	10
15.	App.96/2016	Sh. Preet Pal V/s Dr. Y.S. Parmar Uni. Nauni Solan.	10
16.	Ref.12/2007	The General Secretary Continental Foundation Joint Venture Workers Union, Kinnaur V/s The Project manager, Continental foundation Joint Venture, VPO Solding, Kinnaur.	10

By order,
R.D. Dhiman, IAS
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 66 of 2013.

Instituted on 17.9.2013.

Decided on 31.5.2017.

Raju Ram S/o Shri Kalu Ram R/o Village Banah, P.O Bihun, Tehsil Jogindernagar, District Mandi, HP.

Petitioner.

VS.

M/s Sohan & Sons 120 Lower Bazaar, Shimla through its Proprietor/Partner/Manager Shri Parvinder Singh.

Respondent.

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

For petitioner : Shri Manoj Thakur, Advocate.

For respondent : Shri Vishal Panwar, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Sh. Raju Ram S/O Sh. Kalu Ram, R.O Village, Banah, P.O. Bihun, Tehsil Joginder Nagar, Distt. Mandi, H.P. (who is working as Salesman since 01.4.1988) by Proprietor, M/S Sohan Sons, 120, Lower Bazar, Shimla w.e.f. 09.9.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

“Whether claim amounting of Rs. 42,739/- submitted by Sh. Raju Ram S/O Sh. Kalu Ram, R.O. Village, Banah, P.O. Bihun, Tehsil Joginder Nagar, Distt. Mandi, H.P. as a difference of less wages paid than the minimum wages fixed from time to time by the Govt. of Himachal Pradesh to him from 01-January, 2008 to 9th September, 2012 by the employer, is legal and justified? If yes, what monetary benefits of rate of interest, he is entitled to from above employer?”

2. Facts, in brief are that the petitioner was engaged as a salesman by the respondent in its shop since 1.4.1988 at a monthly salary of ₹700/- and that w.e.f. 31.12.2007 till 9.9.2012, the respondent had failed to pay the minimum wages to him, hence, the respondent is liable to pay ₹42,739/- as a difference of less wages paid than the minimum wages fixed from time to time by the Government of HP and that on 9.9.2012, his services were terminated without any lawful cause and without any notice as such the action of the respondent is in violation of the Minimum Wages Act as well as Industrial Disputes Act, 1947 (hereinafter referred to as Act). Against this back-drop a prayer has been made that the respondent be directed to pay ₹42,739/- as a difference of less wages along-with interest @ 12%. It is further prayed that the petitioner be reinstated in service with all the consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken regarding maintainability and that the petitioner has abandoned the job at his own and that he has no locus standi to file the present claim. On merits,

it has been asserted that w.e.f. the year, 1998, the services of the petitioner had been engaged as part time helper by the respondent for two hours in a day and he was not a salesman/regular employee of respondent. It is further asserted that w.e.f. the year, 2007, the behavior of the petitioner towards other staff/employees and employer remained very rude and many times he took scuffles with other staff members without any rhyme and reason for which he was warned many times. w.e.f the year, 2011, the petitioner was getting the monthly salary of ` 4500/- and earlier to this he was getting monthly salary of ₹2950/- and the respondent had provided full wages to him according to the service rendered by him and a payment of ₹32343/- is due towards the petitioner as on 30.7.2011 which amount was taken by the petitioner from the respondent as advance money at different intervals/occasions. It is also asserted that the services of the petitioner had never been terminated by the respondent who left the job at his own. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 6.9.2014.

1. Whether the termination of the services of the petitioner w.e.f. 9.9.2012 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP.....

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

OPP.....

3. Whether the claim of the petitioner amounting to ₹ 42739/- as a difference of less wages paid than the minimum wages fixed from time to time for the period w.e.f. 1.1.2008 to 9.8.2012 is legal and justified as alleged? If so, to what monetary benefits, he is entitled to?

OPP.....

4. Whether this petition is not maintainable?

OPR.....

5. Relief.

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

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to lump sum compensation of ₹ 25000/- (Twenty Five Thousand only).

Issue no.3 No.

Issue no.4 No.

Relief. Reference partly answered in favour of the petitioner and against the respondent.

Reasons for findings

Issue no.1

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated illegally without following the mandatory provisions of the Act as neither any notice was given to the petitioner nor any compensation was paid to him despite the fact that he had completed more than 240 working days in each calendar year. He further contended that since the respondent had failed to pay full wages to the petitioner w.e.f. Jan., 2008, hence, he is entitled for an amount of ₹ 42739/- as a difference of less wages paid than the minimum wages fixed from time to time by the Government of HP for the period w.e.f. 1.1.2008 to 9.8.2012.

9. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself abandoned his job. He further contended that the respondent had given full wages to the petitioner from time to time, hence, the payment of ₹ 42739/- as a difference of less wages paid than the minimum wages fixed from time to time for the period w.e.f. 1.1.2008 to 9.8.2012 does not arise at all.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 to depose that he was working as salesman with the respondent w.e.f. 1.4.1988 and the respondent had paid him full wages upto the year 2007 but w.e.f. the year, 2008, to September, 2012, the respondent had not paid him full wages and he is entitled to ₹ 42739/- as a difference of wages w.e.f. the year 2008 to 9.9.2012. He further deposed that on 9.9.2012, he was illegally terminated without issuance of any notice. He also deposed that he remained un- employed for a period of 4 months w.e.f. 4.9.2012. He also placed on record the bills/cash memo mark A and the certificate mark B. In cross-examination, he denied that he was engaged as helper. He further denied that he was drawing the salary as prescribed under the Minimum Wages Act. He also denied that he was paid wages @ ₹ 4500/- per month in the year, 2011 and he was given wages @ ₹ 2950/- per month during the year, 2009 to 2011. He denied that he had left the job at his own on 9.9.2012.

11. PW-2 Shri Rajinder Gautam, Labour Inspector has stated that there is no challan with respect to the payment of less wages to the employees by M/s Sohan Sons, 120 Lower Bazar Shimla since the year 2008 to September, 2012.

12. The respondent has examined Shri Tejender Singh as RW-1 who stated that the petitioner was working as a helper in their shop w.e.f. 1988 and he used to work from 10:00 AM to 12:30 PM and the nature of his work was cleaning and opening the bundle of clothes. The petitioner was getting ₹ 2950/- per month as wages prior to the year, 2011 which were increased to ₹ 4500/- per month and he had worked till 1st week of September, 2012. The petitioner was never terminated rather he left the job at his own. He further stated that he had given an amount of ₹ 32343/- in advance and also the amount of ₹ 5200/- in lieu of the leaves which he had taken in excess w.e.f. 2007 till September, 2012 and the aforesaid amount is due towards him. In cross-examination, he admitted that the certificate mark B was issued from their shop in the year, 1995 wherein it has been mentioned that the petitioner has been working as salesman since 1.4.1988. He denied that the petitioner had been working as salesman since 1.4.1988 till September, 2012. He further denied that a sum of ₹ 42739/- is required to be paid to the petitioner as a difference of less wages paid than minimum wages. He also denied that the petitioner was terminated illegally without complying with the provisions of the Act. He admitted that there is no document to show that ₹ 32343/- were given in advance to the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner was engaged by the respondent in the year 1988. The case of the petitioner is that he was engaged as a salesman whereas the case of the respondent is that the petitioner was never engaged as salesman but from the date of his initial engagement, he was engaged as a part time helper to work for just two hours in a day. However, during cross-examination, RW-1 who is the partner of the respondent firm, while appearing into the witness box has admitted that the certificate mark B has been issued from their shop in the year, 1995 wherein it has been mentioned that the petitioner was working as a salesman since 1.4.1988. The contents of the certificate mark B are reproduced as under:

“To whom it may concern

This is to certified that Shri Rajinder Singh S/O Sh. Kalu Ram, resident of r/o Village Banah, P.O. Biun, Tehsil Joginder Nagar, Distt. Mandi, H.P. is working as frash-cum-salesman w.e.f. 1.4.1988 continuously. During this period his work and conduct has been found satisfactory and he is hard worker.

I wish him every success in life.

Sd/-
Sohan Sons
Partner. “

14. In his deposition before the Court, the petitioner deposed that his name is Raju Ram alias Rajinder Singh and in cross-examination, this fact has not been disputed by the respondent. Therefore, in view of the certificate mark B and also in view of the admission made by RW-1, the partner of the respondent firm, it has become clear that the petitioner was engaged as a salesman by the respondent and he had been working as such since 1.4.1988.

15. The further case of the petitioner is that his services were terminated on 9.9.2012 without any reason in violation of the provisions of section 25- F of the Act whereas the case of the respondent is that the services of the petitioner were never terminated but he had abandoned the job at his own. However, there is no evidence on record to suggest that the petitioner had abandoned the job at his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent. In AIR 1979 SC 582 titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd., it has been held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *Buckingham Co. v. Venkatiah* (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

In the present case also no evidence has been placed on record by the respondent that the petitioner had given up his duties with an intention not to resume the same. Hence, in view of the law laid down (supra), and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own.

16. It is not disputed that the petitioner had worked with the respondent w.e.f. 1.4.1988 till the first week of September, 2012. RW-1 in his examination-in-chief deposed before this Court that the petitioner was working in their shop w.e.f. the year, 1988 and he had worked till first week of September, 2012. Therefore, since the petitioner had worked continuously with the respondent w.e.f. 1.4.1988 till the first week of September, 2012, it can safely be held that the petitioner had completed 240 days in each calendar year and also in the twelve months preceding his termination. The evidence on record reveals that neither any notice had been issued to the petitioner nor he was paid any compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union, the Hon^{ble} Apex Court has held as under:

“34. The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent- Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

17. In the present case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon^{ble} Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 9.9.2012 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent.

Issue no.2.

18. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 9.9.2012 by respondent without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. The petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon^{ble} Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination rather he himself deposed in his examination-in-chief that he remained un-employed only for four months with effect from the date of his termination i.e w.e.f. 9.9.2012. Moreover, it is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon’ble Supreme Court in Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC, has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

19. In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon’ble Supreme Court has held that:

“It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. “

20. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief as in view of the allegations and counter allegations made by the parties, there had been a bad blood between them. The respondent had alleged in the reply that the behavior of the petitioner towards other staff/employees and employer remained very rude and many times, he took scuffles with other staff members without any rhyme and reason and for this disruptive behavior, he was given warnings and asked to mend his behavior but he never remained loyal to his employer during his service period. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent. Since, the respondent is not running a big industrial establishment and running only a shop, therefore, in such a situation, it would be quite reasonable and justified if lump sum compensation of ₹ 25,000/- (Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent. Issue no.3.

21. The learned counsel for the petitioner contended that the respondent had not paid to the petitioner his full wages as prescribed under the Minimum Wages Act 1948 w.e.f. Jan., 2008 as such the respondent is liable to pay a sum of ₹42739/- as a difference of wages actually paid than the minimum wages fixed from time to time by the Government of HP. The case of the petitioner is that he was engaged as a salesman in the shop of respondent at a monthly salary of ` 700/-. However, to prove this fact no documentary evidence has been produced by the petitioner that he

was drawing wages @ ₹700/- per month. The petitioner has failed to place on record the details as to how he has arrived at a figure of ₹42,739/- as a difference of less wages actually paid than the minimum wages fixed from time to time. Despite repeated opportunities for evidence, the petitioner has failed to produce on record the notifications issued by the State Government from time to time fixing the minimum wages for the period w.e.f. 1.1.2008 to 9.9.2012. The petitioner has even failed to prove on record that he was being paid less wages than the minimum wages fixed by the government from time to time. PW-2, the own witness of the petitioner has deposed before this Court that the respondent was never challaned with respect to the payment of less wages to its employee since the year, 2008 to September, 2012. It is a settled law that obligation to lead evidence to establish an allegation made by a party is upon the party making the allegation. The test would be as to who would fail if no evidence is led. The party making the allegations and seeking the redressal must seek an opportunity to lead evidence. Therefore, in the absence of any evidence on record, it cannot be said that the petitioner was being paid less wages than the minimum wages fixed by the Government from time to time and that the petitioner is entitled to ₹42739/- as a difference of less wages. Accordingly, this issue is decided in favour of respondent and against the petitioner.

Issue no.4.

22. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent is directed to pay ₹ 25,000/- (₹ Twenty Five Thousand only) as lump sum compensation to the petitioner within a period of three months from today failing which the same shall carry interest @ 9% per annum from the date of award till its realisation. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 31st Day of May, 2017.

(Praveen)

By order,
(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref no. 13 of 2013.

Instituted on 22.4.2013.

Decided on 31.5.2017.

Rajinder Kumar Bhardwaj S/o Shri Basu Dev Bhardwaj R/o Village Lalsa, P.O Dansa, Tehsil Rampur, District Shimla, HP.

Petitioner.

VS.

M/s Ind Sphinx Precision Ltd. 28, Sector-5 Parwanoo, District Solan, HP through its Managing Director.

Respondent.

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

For petitioner : Shri R.K Khidtta, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of services of Shri Rajender Kumar Bhardwaj Village Lalsa, P.O Dansa, Tehsil Rampur, District Shimla HP by the management of M/s Ind-sphinx Precision Ltd., 28 Sector-5, Parwanoo, Tehsil Kasauli, District Solan, HP w.e.f. 22.12.2011 without following the provisions of the Industrial Disputes Act 1947 is legal and justified? If not, what relief including reinstatement in service, back wages, seniority, service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. In nutshell the case of the petitioner is that he was engaged as operator by the respondent company in the maintenance department unit-A on 4.12.2006 and was confirmed w.e.f. 4.6.2007 and he worked as such till 22.12.2011. It is further stated that the work and conduct of the petitioner remained always upto the mark of the concerned official and he worked with full dedication and even he was given number of appreciation letters and was also given special increment and on 1.1.2008, he was shifted to unit-B and due to short circuit in the factory, his both hands had burnt and he also received injuries in other parts of the body and even on his request, the company had failed to fill up the accident form. It is also stated that the petitioner remained under treatment for one and half month and did not receive any benefits from ESI and due to injuries, he started feeling ill and on the request for sick leave, the company started creating pressure upon the petitioner to resign from the post and when he did not accept the demand of the company, his services were terminated w.e.f. 12.8.2008 on false allegations. That against the illegal termination, the petitioner raised demand notice/complaint to the Labour-cum-Conciliation Officer, Solan and during conciliation the company agreed to take back the petitioner and since the company was not happy with the settlement, the services of the petitioner were transferred from unit B to unit A and he was shifted from maintenance department to production department where the performance of the petitioner was intentionally assessed on the lower side by the concerned official and some time he was not paid increments. The management started leveling false allegations upon the petitioner and issued false warning letters and even he was served show cause notice dated 22.7.2010 and ultimately false chargesheet dated 17.9.2010 was served upon him which was duly replied by the petitioner and thereafter the company appointed Ms. Rosy Atoria as an enquiry officer, who right from the very first day started favouring the company and had not appreciated the version, witnesses and documents

produced by the petitioner and from the very beginning the enquiry officer acted as per the wishes of the company and ensure the removal of the petitioner from the services of the company. After the enquiry, the company issued show cause notice to the petitioner which was duly replied by him and ultimately the services of the petitioner were terminated vide letter dated 22.12.2011 and that too during the pendency of the conciliation proceedings before the Conciliation Officer which is totally illegal and thereafter the petitioner raised the demand notice. It is stated that the enquiry conducted by the enquiry officer is illegal and contrary to the provisions of Standing Orders and also against the principles of natural justice as the enquiry officer had not followed the principles of natural justice. That the termination of the petitioner tantamount to unfair labour practice of which he is victim and the action of the respondent company is totally against the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner is unemployed w.e.f. 22.12.2011 and is nowhere gainfully employed as such the respondent company is bound to pay full salary to him. That due to the violation of the provisions of the Act, the conciliation officer had refused to grant the permission to dismiss the services of the petitioner. Against this back-drop a prayer has been made that dismissal of the petitioner w.e.f. 22.12.2011 be quashed and set aside and the respondent be directed to reinstate the petitioner in service with all the consequential service benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is neither competent nor maintainable. On merits, it has been asserted that the services of the petitioner have been terminated on 22.12.2011 after conducting a just, fair and proper enquiry in respect of charges leveled vide charge sheet dated 17.9.2010 for the misconduct of repeated absenteeism, unauthorized extension of leave, refusal for accepting of official communications and repeated poor performance which stood duly proved in the enquiry and the enquiry was conducted by the enquiry officer in a just fair and proper manner as per the procedure prescribed in the standing orders of the respondent and as per the principle of natural justice and fair hearing. It is further asserted that the performance of the petitioner was very poor and he had been issued various communications/letters to improve his performance but when he failed to improve his performance, charge sheet dated 17.9.2010 was issued to him and even he suffered burn injuries on account of his own act and conduct and not on account of short circuit in the factory. It is denied that the petitioner requested the respondent to fill-up the accident form to get accidental benefits from ESI. It is also denied that after suffering injuries, the petitioner started feeling ill and had requested for sick leave and the respondent started creating pressure upon him to resign. It is asserted that the demand notice raised by the petitioner was totally false and frivolous and vide settlement dated 23.8.2008, the petitioner joined his duties during the 2nd half of 21.8.2008 and thereafter he himself absented from duty and the enquiry officer was an independent and impartial person who gave all the opportunities to allow the petitioner to put forth his case, to cross-examine the witnesses of the respondent and to bring his own witnesses. It is further asserted that the petitioner was given enquiry report along-with 2nd show cause notice and he asked the copy of Hindi enquiry report which was also given to him and the reply to 2nd show cause notice was given by the petitioner which was not found satisfactory and thereafter his services were terminated on 22.12.2011 and an amount of ₹ 9609/- towards full & final settlement was remitted to him. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 23.10.2013.

1. Whether the services of the petitioner w.e.f. 22.12.2011 were illegally terminated without complying with the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

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

3. Whether this petition is neither competent nor maintainable as alleged in preliminary objections no. 1 & 2?
OPR.....

4. Relief.

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

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Decided accordingly.

Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back-wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against the respondent.

Reasons for findings

Issues no.1.

8. The learned counsel for the petitioner contended that the charges leveled against the petitioner are totally false and baseless and the enquiry officer had not conducted the enquiry against the petitioner in a fair and proper manner. He further contended that at the time of the termination of the services of the petitioner, the conciliation proceedings were pending before the Labour-cum-Conciliation Officer and since no permission/approval was taken by the respondent from the competent authority as such there has been violation of section 33 of the Act. He also contended that the punishment of dismissal of the services imposed upon the petitioner is disproportionate to the gravity of misconduct and the same deserves to be set aside.

9. On the other hand, Ld. counsel for the respondent contended that the charges leveled against the petitioner vide charge sheet dated 17.9.2010 are true and correct and a proper domestic enquiry was conducted against him by following the principles of natural justice. He further contended that no proceedings were pending at the time of dismissal of the services of the petitioner and there has been no violation of section 33 of the Act.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 to depose that he was appointed as an operator by the respondent company on 4.12.2006 vide appointment letter Ex. PW-1/A and vide letter Ex. PW-1/B, his services had been confirmed on 4.6.2007 and he worked till 22.12.2011. He further deposed that his service record remained good for which he was given appreciation letters and increments vide letters Ex. PW-1/C to Ex. PW-1/E. He also deposed that when he was working in Unit B on 3.2.2008, then he received burn injuries due to the short circuit during the course of employment on 3.2.2008 for which he remained under treatment for one and half months. He also deposed that no accidental benefits were given to him by the company through ESI. He also deposed that due to the burn injuries, he started feeling

unwell and the company refused to sanction him leaves and asked him to tender resignation and his services were terminated on 12.2.2008. He also stated that then he raised demand notice upon which a settlement Ex. PW-1/F was arrived at between the parties before the Labour-cum-Conciliation Officer in terms of which the respondent company had reinstated him in service. He also deposed that since the company was not happy with the settlement then he was transferred from Unit B to Unit A where his performance was intentionally assessed on the lower side and the company started leveling false allegations against him. He also deposed that ultimately a show cause notice dated 22.7.2010 was issued to him and then chargesheet dated 17.9.2010 was issued and thereafter Ms. Rosy Attoria was appointed as an enquiry officer. He also deposed that the enquiry was not conducted against him in a fair and proper manner and he was not allowed to put up his defence. He also deposed that w.e.f. the date of his termination, he is not gainfully employed. In cross-examination, he admitted that the respondent had issued him a warning letter dated 20.8.2010 Ex. R-2 and letter dated 26.8.2010 Ex. R-3 to improve his performance. He also admitted that he appeared before the enquiry officer on 4.12.2010 but denied that the enquiry officer had explained the entire procedure to him. He admitted his signatures in the enquiry proceedings dated 4.12.2010. He further admitted that during the enquiry proceedings the documents were received by him on 17.10.2010 vide Ex. R-18 which was duly signed by him. He also admitted that the certified standing orders of the company were also received by him vide letter Ex. R-19. He admitted that he participated in the entire enquiry proceedings and had cross-examined the management witnesses and that he was also cross-examined on behalf of management. He further admitted that he received all the enquiry proceedings and had also submitted his statement in writing which is Ex. R-21 and had also annexed the documents with the same. He also admitted that a show cause notice was issued to him along-with enquiry report and he had also submitted reply Ex. R-22. He admitted that he was doing agriculture work to earn livelihood.

11. PW-2, Surinder Singh Bisht, Labour Inspector produced on record the demand notice dated 15.12.2010 Ex. PW-2/A, notice issued by the Labour Inspector-cum- Conciliation Officer Parwanoo Ex. PW-2/B, reply filed by the company Ex. PW-2/C, conciliation proceedings held in letter dated 15.12.2010 Ex. PW-2/D, letter dated 13.3.2011 Ex. PW-2/E and Ex. PW-2/F. He deposed that the conciliation officer had prepared his report on 20.4.2011 which was not sent to the appropriate government. In cross-examination, he admitted that the conciliation officer had not sent the report to the appropriate government and volunteered that the same was not sent because no action was taken against the petitioner in the domestic enquiry and he was advised to raise the demand notice as and when some action would be taken against him.

12. The respondents examined four RWs in all. RW-1 Shri Pitamber Dutt Sharma, Labour Inspector Parwanoo has produced the record of conciliation proceedings in respect of demand notice dated 15.12.2010 raised by Rajinder Kumar Bhardwaj Ex. RW-1/A which were concluded on 20.4.2011. In cross-examination, he admitted that the record which he had brought had not been prepared by him and that the Labour Inspector is bound to sent the failure report to the appropriate government. He further admitted that no failure report was sent to the appropriate government but volunteered that since the petitioner was not terminated as per Ex. RW-1/A, therefore, the demand notice raised by the petitioner was considered as pre-mature.

13. RW-2 Shri Devinder Kumar, Clerk O/o Labour Officer Solan has brought the record of demand notice dated 23.12.2011 Ex. PW-1/N and the failure report under section 12 (4) of the Act with respect to the aforesaid demand notice Ex. RW-2/A. In cross-examination, he admitted that the proceedings were not concluded on 3.3.2012 and that after the conclusion of the proceedings, the report is sent to the appropriate government.

14. RW-3, Shri Pradeep Sharma, Senior General Manager and Factory Manager of respondent company tendered his affidavit Ex. RW-3/A in evidence wherein he reiterated almost

all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RX-1, letters dated 21.7.2010, 22.7.2010 and 26.8.2010 Ex. RX-2 to Ex. RX-4, 2nd show cause notice dated 18.3.2011 Ex. RX-5 along-with enquiry report in English Ex. RX-6 and its Hindi version Ex. RX-7, charge sheet dated 17.9.2010 Ex. RX-8, accident report Ex. RX-9, letter dated 29.1.2012 mark RA-1, letter dated 3.11.2010 mark RA-2, letter dated 3.9.2010 mark RA-3, certified standing orders along-with addition mark RA-4, letter dated 17.9.2010 mark RA-5, letter dated 15.12.2010 mark RA-6, letter dated 28.2.2011 mark RA-7 and letter dated 25.7.2010 mark RA-8. In cross-examination he admitted that the petitioner was engaged as an operator in maintenance unit-A on 4.12.2006 vide appointment letter Ex. PW-1/A and vide letter Ex. PW-1/B, his services were confirmed w.e.f. 4.6.2007 and he worked till 22.12.2011. He further admitted that number of appreciation letters and increment letters were issued to the petitioner during his service. He also admitted that special increment is granted to the workers, whose performance is extra ordinary and that special increment was granted to the petitioner in May, 2010. He admitted that the petitioner was shifted to unit-B w.e.f. 1.1.2008. He further admitted that both the hands of the petitioner were burnt and he also suffered injuries on the other parts of the body during the course of employment. He denied that the injuries were caused due to the short circuit. He admitted that accident report is filled up whenever an accident takes place in the factory and the report is forwarded to ESI authority. He further admitted that accident report was not forwarded to ESI or any other authority. He denied that the petitioner used to remain ill due to the burn injury and for that reason he had to apply for medical leave. He admitted that before Labour-cum- Conciliation Officer, they have agreed to keep him back in service vide settlement Ex. PW-1/M. He admitted that thereafter the petitioner was shifted from maintainace department to production department but he denied that he was shifted with a view to victimize him. He admitted that reply to show cause notice Ex. PW-1/J was filed by the petitioner. He denied that the enquiry officer had not conducted the enquiry in proper and fair manner. He admitted that reply to 2nd show cause notice was filed by the petitioner. He admitted that no permission was taken by the respondent from Labour-cum-Conciliation Officer, Labour Court or any other authority.

15. RW-4, Ms. Rosy Atoria, Enquiry officer has stated that she was appointed as an enquiry officer vide letter dated 3.11.2010 Ex. RW-2/A. She further stated that she wrote letter Ex. R-17 to the petitioner as well as to the respondent intimating the date of enquiry and the enquiry was started on 4.12.2010 on which date Mr. Hukum Chand from management side and the petitioner appeared in person and on the first date the petitioner was explained the procedure of enquiry and he was told about his rights and vide letter mark RA dated 3.12.2010, he was supplied about 18 documents which were made part of record. She also stated that enquiry proceedings dated 4.12.2010 Ex. RW-2/B, dated 18.12.2010 Ex. RW- 2/C, dated 25.12.2010 Ex. RW-2/E, dated 28.12.2010 Ex. RW-2/F dated 31.12.2010 Ex. RW-2/G, dated 15.1.2011 Ex. RW-2/H are in her hand and the same bears the signatures of petitioner as well as management representative and vide enquiry proceedings Ex. RW-2/J and Ex. RW-2/K, all the MWs were cross-examined by the petitioner himself and on 5.2.2011, the petitioner gave his statement Ex. R-21 in writing and he also submitted the documents which were made part of the record. On 9.2.2011 vide Ex. RW-2/M, the petitioner was cross- examined and thereafter the enquiry proceedings were closed and she submitted the enquiry report Ex. RX-6 on 5.3.2011. She also stated that the enquiry was conducted in a fair and proper manner as per the principles of natural justice and the procedure prescribed in certified standing orders. In cross-examination, she denied that the petitioner had opposed his appointment as enquiry officer on the very first date and that she started the enquiry proceedings without getting the certified standing orders of the company. She further denied that procedure was not explained before starting the enquiry and that the petitioner was not permitted to be represented by defence assistant. She denied that the enquiry was got conducted by her at the instance of management. She denied that the petitioner was not allowed to lead his defence evidence and that the principles of natural justice were not followed in the enquiry proceedings.

16. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner joined the respondent company as an operator on 4.12.2006 and thereafter was confirmed on 4.6.2007. It is also an admitted fact that initially on 12.8.2008, the services of the petitioner were terminated by the respondent, however, on the demand notice having been raised by the petitioner before the Labour-cum-Conciliation Officer, Solan, an amicable settlement dated 23.8.2008 was arrived at between the parties and the petitioner was taken back in service by the respondent and the petitioner again joined his duties with the respondent. It is also a matter of record that on 17.9.2010, a charge sheet was issued to the petitioner for having committed misconduct of repeated absenteeism, unauthorized extension of leave, refusal for accepting of official communications and repeated poor performance. The charge sheet dated 17.9.2010 was replied to by the petitioner vide letter dated 13.10.2010. Since, the explanation of the petitioner was not found satisfactory, an enquiry was ordered to be conducted against him and vide letter dated 3.11.2010, Ms. Rosy Attoria was appointed as an enquiry officer to enquire into the charges leveled against the petitioner vide chargesheet dated 17.9.2010. The petitioner participated in the enquiry and after the conclusion of the proceedings, the enquiry officer submitted the enquiry report wherein the charges leveled against the petitioner stood duly proved and the services of the petitioner were terminated on 22.12.2011.

17. The learned counsel for the petitioner first contended that the charges leveled against the petitioner are totally false and baseless and a false chargesheet was issued to the petitioner. However, to substantiate the aforesaid contention, the petitioner has failed to lead any cogent and satisfactory evidence on record. It was for the petitioner to prove by leading cogent and satisfactory evidence on record that the charges leveled against him vide chargesheet dated 17.9.2010 are totally false and baseless. However, except for the bald statement of the petitioner no other evidence has been led by him to prove this fact. Therefore, in the absence of any cogent and satisfactory evidence on record led by the petitioner before this Court, it cannot be said that the charges leveled against him are totally false and baseless.

18. The learned counsel for the petitioner next contended that the enquiry officer has not conducted the enquiry in a fair and proper manner and the principles of natural justice were also not followed during the enquiry proceedings. He further contended that the petitioner was not afforded proper opportunity to cross-examine the management witnesses and he was also not allowed to lead evidence in his defence. In *K.L. Tripathi Vs. State Bank of India and ors.* AIR 1984 SC 273 while dealing with the concept of natural justice in the back-drop of departmental proceedings, it has been held as under:

"It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Others*, (1991) 2 SCC 716, the Hon'ble Apex Court laid down that strict rules of the

Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. The relevant para of the aforesaid judgment is reproduced as under:

“37. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof, but inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish..... The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. The aforesaid decision was relied upon by the Hon'ble Supreme Court in AIR 2005 S.C 570 titled as Cholan Roadways Ltd. Vs. G Thirugnanasambandam, wherein it has been observed as under:

“17. There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum.”

“18.....”

19. It is further trite that the standard of proof required in a domestic enquiry vis-à-vis a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative.”

19. From the aforesaid decisions of the Hon'ble Supreme Court, it has become quite clear that in a domestic enquiry, the principles of natural justice are to be observed on certain parameters and the enquiry is to be fairly and properly conducted. That apart, the proof in a domestic enquiry stands on a different platform that is required in a court of law and strict rules of Evidence Act do not apply to domestic enquiry. Now, in the light of the aforesaid decisions of the Hon'ble Supreme Court, it has to be seen in the present case as to whether there was any violation of principles of natural justice in the enquiry held against the petitioner. While appearing into the witness box as PW-1, the petitioner deposed before this Court that the enquiry conducted against him was unilateral and was not conducted in a fair and proper manner and the enquiry officer had not given him an opportunity to put up his defence and she used to write the proceedings at her own. However, in cross-examination, he admitted that he had not made any complaint to the higher authorities that the procedure was not explained to him by the enquiry officer. He also admitted that the documents were received by him in the enquiry on 17.10.2010. He also admitted that the certified standing orders of the company were also received by him. He further admitted that he joined the enquiry proceedings on each and every date and had also cross-examined the witnesses of the management. He admitted that all the proceedings of the enquiry have been signed and received by him. He further admitted that he had submitted his statement in defence in writing the copy of which is Ex. R-21 and had also annexed the documents along-with the same. The enquiry officer Ms. Rosy Attoria appeared in the witness box as RW-4

and she categorically deposed that on the first date of enquiry, the petitioner was explained about the procedure of the enquiry and he was told about his rights. She also stated that the documents as well as the certified standing orders were also supplied to him. She further stated that all the management witnesses were cross-examined by the petitioner himself and thereafter the petitioner gave his statement in writing which is Ex. R-21 and also submitted the documents. She also stated that the petitioner was also asked to bring any other evidence but he refused to bring the same and after the cross-examination of the petitioner, the enquiry proceedings were closed and thereafter she submitted the enquiry report Ex. R-6 on 5.3.2011. She deposed that the enquiry proceedings of each day were supplied to the petitioner and he appended his signatures acknowledging the receipt of the same. She also stated that the enquiry was conducted in a fair and proper manner and as per the procedure prescribed in the standing orders. The enquiry officer was cross-examined at length by the learned counsel for the petitioner however nothing favourable could be elicited from her lengthy cross-examination. During the cross-examination, she admitted that a worker has a right to be represented by a defence assistant but she categorically denied that the petitioner was not permitted to be represented through defence assistant and she volunteered that the petitioner himself opted not to be represented by defence assistant. She admitted that after the closer of the evidence of the management the petitioner was not asked to submit his list of witnesses but she volunteered that after the statement of the petitioner, he was asked to bring any other evidence but he refused. She denied that the petitioner was not allowed to lead his defence evidence. She also denied that the principles of natural justice were not followed in the enquiry proceedings. The perusal of the enquiry report Ex. RX-6 and the enquiry proceedings shows that the enquiry was conducted in a fair and proper manner and there was no violation of principles of natural justice. The onus was upon the petitioner to prove that the enquiry was not conducted in a fair and proper manner. It is a settled law that obligation to lead evidence to establish an allegation made by a party is upon the party making the allegation. The test would be as to who would fail if no evidence is led. The party making the allegations and seeking the redressal must seek an opportunity to lead evidence. In the present case, the petitioner has pleaded that the enquiry was not conducted against him in a fair and proper manner. However, to substantiate these allegations, except for his bald statement, no other evidence has been led by the petitioner. Therefore, in the absence of any material on record and in the absence of any cogent evidence adduced by the petitioner, it cannot be said that the enquiry was not conducted in a fair and proper manner and there had been any violation of principles of natural justice as contended by the learned counsel for the petitioner.

20. The learned counsel for the petitioner next contended that there has been a violation of section 33 of the Act in dismissing the services of the petitioner as at the time of termination of the services of the petitioner, the conciliation proceedings were pending before the Labour-cum-Conciliation Officer with respect to the demand notice dated 15.12.2010. To substantiate his contention, the learned counsel for the petitioner relied upon the statement of PW-2, Shri Surender Singh, the then Labour Inspector, Parwanoo who produced on record demand notice dated 15.12.2010 Ex. PW-2/A, notice issued by the Labour-cum-Conciliation Officer, Parwanoo Ex. PW-2/B, reply filed by the company Ex. PW-2/C, conciliation proceedings Ex. PW-2/D and he further stated that the report was prepared by the conciliation officer on 20.7.2011 but the same was not sent to the appropriate government. Therefore, the learned counsel for the petitioner contended that since the proceedings were pending between the parties before the Labour-cum-Conciliation Officer, Parwanoo and as per the provisions of section 33 of the Act, the respondent has not taken any permission/approval from the competent authority as such in the present case there is violation of section 33 of the Act. However, the learned counsel for the respondent contended that no industrial dispute was pending at the time of dismissal of the services of the petitioner as such there is no violation of section 33 of the Act. The perusal of demand notice Ex. PW-2/A shows that a letter was written by the petitioner to the Assistant Manager (HR) of the respondent company on 15.12.2010 with the allegation that he was being victimized by the officials of the company and

he also apprehended that he may be removed from service. The copy of the aforesaid letter has been sent to various authorities including the Labour Inspector, Parwanoo, who on the aforesaid letter, issued notice Ex. PW-2/B to the Factory Manager of the respondent company to appear before him. RW-1 has produced on record the conciliation proceedings Ex. RW-1/A in respect of the aforesaid demand notice dated 15.12.2010 and he stated that the conciliation proceedings were concluded on 20.4.2011. In cross-examination, he admitted that no failure report was sent to the appropriate government and volunteered that since the petitioner was not terminated therefore the demand notice raised by him was considered as pre-mature. PW-2 also admitted in cross-examination that the failure report was not sent to the appropriate government because at that time no action was taken against the petitioner and the petitioner was advised that whenever some action would be taken against him, then he can raise the demand notice. The perusal of the proceedings Ex. RW-1/A also shows that the workman was advised to raise appropriate demand notice as and when any improper action is taken against him. The relevant portion of the conciliation proceedings dated 20.4.2011 are reproduced as under:

“Enquiry report reveals that enquiry officer has sent the report to the management for consideration. As till date no punishment has been awarded to the workman by the management in consideration of enquiry report, hence workman is advised to raise a proper demand notice as and when any improper action is taken against him by the management”.

Therefore, in view of the conciliation proceedings dated 20.4.2011, it can be safely held that the conciliation proceedings stood concluded on 20.4.2011 with respect to the demand notice dated 15.12.2010 raised by the petitioner and since the demand notice raised by the petitioner was considered as pre-mature, he was advised to raise the proper demand notice as and when any action was taken against him by the respondent. It is not disputed that the services of the petitioner were terminated on 22.12.2011 after the conclusion of conciliation proceedings. Hence, it cannot be said that any conciliation proceedings were pending between the parties at the time of the termination of the services of the petitioner. Therefore, it cannot be said that the respondent company had violated the provisions of section 33 of the Act while terminating the services of the petitioner.

21. The learned counsel for the petitioner lastly contended that the punishment of dismissal of the services of the petitioner is disproportionate to the gravity of misconduct. The charges leveled against the petitioner vide chargesheet dated 17.9.2010 were regarding repeated absenteeism, unauthorized extension of leave, refusal for accepting of official communications and repeated poor performance. The charges against the petitioner stood proved and his services had been dispensed with w.e.f. 22.12.2011. In the opinion of this Court, the dismissal of a workman on the allegations leveled in the chargesheet dated 17.9.2010 is excessively high and grossly disproportionate to the gravity of misconduct. The charges leveled against the petitioner cannot be regarded as an act of grave misconduct. In (2005) 3 S.C.C 134, Mahindra and Mahindra Ltd. Vs. N.B Narawade, it has been held by the Hon'ble Supreme Court that after introduction of section 11 –A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/ Tribunal in interfering with the quantum of punishment whereby the concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under:

“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised

under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.” (emphasis supplied).

22. In the present case, it is a matter of record that the past service record of the petitioner was clean and no other misconduct had been pointed out against him and he was given number of appreciation letters and was also given special increment. The record reveals that the petitioner received burn injuries during the course of employment due to which he had to remain under treatment and after suffering injuries he started feeling unwell and therefore at times, he had to apply for leave and had to remain absent from his duties. The record further reveals that the petitioner was shifted from maintenance to production department. Admittedly, the petitioner had been engaged as an operator and not in a sensitive post and this is not the case of dishonesty, misappropriation or using abusive language against the superior officers which require an extreme penalty of dismissal. Hence, in view of the entire evidence led by the parties and also in view of the facts and circumstances of the present case, this Court is of the opinion that the quantum of punishment imposed upon the petitioner was too harsh and wholly disproportionate to his act of misconduct. Therefore, looking into the charges leveled against the petitioner vide chargesheet dated 17.9.2010 and keeping in view his past service record, the punishment of dismissal of the services of the petitioner w.e.f. 22.12.2011 is hereby set aside and quashed. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.2.

23. Since, I have held under issue no.1 above that the action of the respondent to terminate the services of the petitioner w.e.f. 22.12.2011 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

24. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon’ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon’ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

25. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of her services. The initial burden is on the workman/employee to show that she was not gainfully employed as held by the Hon’ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The

initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

26. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Rather, he admitted in cross-examination that he had been doing agriculture work to earn livelihood for himself as well as his family members. In (2007) 10 SCC 765, North East Karnataka Road Transport Corporation Vs. M. Nagangouda, it has been held by the Hon’ble Supreme Court that gainful employment would also include self employment. The relevant portion of the aforesaid judgment is reproduced as under:

“On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, "gainful employment" would also include self employment wherefrom income is generated. 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. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment". (Emphasis supplies).

Therefore, in view of the aforesaid judgments of the Hon’ble Supreme Court, coupled with the fact that the petitioner had been doing the agricultural work for livelihood, I have no hesitation in holding that the petitioner is not entitled to any back-wages. Hence, this issue is decided partly in favour of the petitioner and against the respondent.

Issue No.3.

27. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication. I find nothing wrong with this petition which is legally maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages and as such the reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st Day of May, 2017.

(Parveen)

By order,
(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref no. 02 of 2016.

Instituted on 1.1.2016.

Decided on 15.5.2017.

Pyare Lal S/o Shri Himpur, R/o Village Pujarli, P.O Kavar, Tehsil dodra Kavar,
District Shimla, HP.

Petitioner.

VS.

1. The Divisional Forest Officer, Rohru, Division Rohru District Shimla, HP.
2. Range Officer Kavar (Forest Department) Tehsil Dodra Kavar, District Shimla, HP.

Respondents.

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

For petitioner : Shri Vasu Sood, Advocate.

For respondent : Ms. Reena Chauhan, Dy. DA.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

”Whether termination of the services of Shri Pyare Lal S/o Sjhri Himpur, R/o Village Pujarli, P.O Kavar, Tehsil Dodra Kavar, District Shimla, H.P by the Divisional Forest Officer, Rohroo Forest Division, Rohroo District Shimla, HP during December, 2007 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 5 years in raising the industrial dispute, what amount of back-wages, seniority, past service benefits and compensation the aggrieved workman is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that w.e.f. March, 1997, he was appointed as beldar on daily wages basis and worked as such till Feb., 2007 and thereafter his services were terminated without any reason and without serving any prior notice as required under the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner worked at various places under respondents and after his termination, many juniors/fresh hands have been retained/engaged by the respondents in violation of the provisions of section 25-G and 25-H of the Act. The petitioner had completed 240 days in twelve calendar months preceding his termination and his services were not reinstated despite several requests. Against this back-drop a prayer has been made that the respondents be directed to re-instate the petitioner in service along-with all consequential benefits including back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua estoppel, time barred and that the petitioner failed to

qualify the screening test for which he was called for. On merits, it has been asserted that the petitioner was engaged on daily wages in April, 1997 and worked upto December, 2007. It is denied that the services of the petitioner were terminated illegally. It is asserted that the petitioner used to abandon the job at his own and as such there was no need to serve any notice and even opportunity for consideration of his case was given to the petitioner for regularization in Feb. 2010 but he was found unfit by the Screening Committee. It is denied that junior/fresh persons to the petitioner have been retained/engaged by the department in violation of the provisions of section 25-G and 25-H of the Act. It is admitted that the petitioner had completed 240 days in twelve calendar months. It is also asserted that the petitioner has raised the present dispute after a gap of five years and failed to show any reason for his inordinate delay of five years.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 5.9.2016.

5. Whether the termination of the services of the petitioner during December, 2007 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP.....

6. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled?

OPP.....

7. Whether the present petition is time barred as alleged?

OPR.....

8. Whether the petitioner is estopped to file the present petition on account of his act, conduct, deeds, acquiesces as alleged?

OPR.....

9. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back- wages.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the petitioner and against the respondents per operative part of award.

Reasons for findings

Issues no.1 & 3.

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

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents department and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, Ld. Dy. DA for the respondents contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even the opportunity was given to the petitioner for consideration of his case for regularization in Feb., 2010 but he was not found fit by the Screening Committee. She further contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed in CWP no. 4324 dated 18.11.2015 mark P-1 and list of juniors mark P-2. In cross-examination, he denied that the department had never terminated his services and he had left the job at his own. He admitted that in the year, 2010, his case for regularization was considered by the screening Committee but he was found unfit. He denied that no junior was retained by the respondents. He admitted that he had raised the present dispute after a period of 5 years. He denied that the persons mentioned in his affidavit were appointed in the year, 1997 and that no person appointed in the year, 1997 has been retained or regularized.

11. The respondents have examined one Shri Bishan Singh, Range Forest Officer Dodra Kavar, as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence copy of mandays chart Ex. RW-1/B, copy of result sheet of screening committee held on 9.2.2010 Ex. RW-1/C. In cross-examination, he admitted that the petitioner was engaged in the year, 1997 and he worked till the year, 2007 and that the petitioner had completed 240 days in each calendar year except the year, 1998. He denied that the services of the petitioner were terminated in the year, 2007. He admitted that no notice was issued to the petitioner for resumption of his duties. He denied that the persons mentioned at serial no. 4 and 6 onwards in Ex. RW-1/B are juniors to the petitioner. He further denied that fresh hands were engaged.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, the first question which arises for consideration before this Court is as to whether the petition is time barred. It is not in dispute that the petitioner had worked till December, 2007 with the respondents and he raised the industrial dispute after a gap of about 5 years. The law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon^{ble} Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon^{ble} Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.* that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely

hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

It has also been held by the Hon“ble Supreme Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496 that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue. In a latest judgment, the Hon“ble Supreme Court in 2014, 10 SCC 301 titled as Raghubir Singh Vs. General Manager, Haryana Roadways

Hissar has held that Limitation Act has no application to reference made by the appropriate government to Labour Court/Industrial Tribunal for adjudication of existing industrial dispute. The relevant portion of the aforesaid judgment is reproduced as under:

“16 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 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 supplied).

17 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”.

Therefore, the aforesaid law declared by the Hon“ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

13. In the back-ground of the aforesaid legal position, now coming to the facts of the present case. The services of the petitioner were terminated in December, 2007. Thereafter, the

petitioner raised the Industrial Dispute and vide order dated 18.11.2015 passed by the Hon^{ble} High Court in CWP no. 4324 of 2015, it was directed that the matter be referred to the Labour Court for adjudication and as such the present reference has been received by this Court for adjudication. Since, the petitioner has kept the dispute alive, therefore, he cannot be blamed for delay. Moreover, it is not the case of the respondents that due to the delay in raising the industrial dispute, there is any loss or unavailability of material evidence. Hence, it cannot be said that delay in raising the industrial dispute is fatal to the reference and as such the petitioner cannot be debarred from claiming the relief from his employer and mere delay in challenging the termination would not be a bar to the adjudication of the present dispute which has been referred to this Court by the appropriate government.

14. The learned ADA for the respondents next contended that the petitioner had left the job at his own after December, 2007. However, there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondents. Even RW-1 Shri Bishan Singh, Range Forest Officer has admitted in cross-examination that no notice was issued to the petitioner to resume the duties. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd. where it has been held that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. The relevant paragraph of the aforesaid judgment is reproduced as under:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *Buckingham Co. v. Venkatiah* (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

Hence, in view of the law laid down (*supra*), and also in the absence of any evidence on record that the petitioner intended to abandon the service, it cannot be said that the petitioner had left the job at his own.

15. From the closer scrutiny of the record, it has become clear that initially the petitioner was engaged as beldar on daily wages basis by the respondents in the year 1997 and worked as such till December, 2007. Admittedly, as per mandays chart Ex. RW-1/B, the petitioner had worked for 272 days in the year, 1997, 261 days in 1998, 278 days in 1999, 245 days in 2000, 259 days in 2001, 98 days in 2002, 248 days in 2003, 271 days in 2004, 269 days in 2005, 248 days in 2006 and 268 days in the year, 2007. From the mandays chart Ex. RW-1/B, it is also clear that the petitioner had completed 240 working days in twelve calendar months preceding his termination. The respondents have admitted in the reply that the petitioner had completed 240 days in preceding twelve calendar months and RW-1 also admitted in cross-examination, that the petitioner has completed 240 days in twelve calendar months except the year, 1998. It is also an admitted fact

that neither any notice had been issued to the petitioner nor he was paid compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondents to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondents have failed to comply with the provisions of section 25-F of the Act. In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union, the Hon'ble Apex Court has held as under:

“34. The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent- Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

16. In the present case also as observed aforesaid, the respondents have failed to comply with the provisions of section 25-F of the Act before terminating his services. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner during December, 2007 by the respondents without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

17. The learned counsel of the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working as such the respondents had violated the principles of “last come first go”. The petitioner in para 1 of his affidavit Ex. PW-1/A has mentioned the names of some junior persons and fresh hands who have allegedly been engaged by the respondents after the termination of the services of the petitioner but in support thereof, no cogent and satisfactory evidence has been led by him which could go to show that the persons mentioned in affidavit Ex. PW-1/A are the juniors to the petitioner and that fresh hands have been engaged by the respondents. Therefore, in the absence of cogent and satisfactory evidence on record, it cannot be said that the persons named by the petitioner in his affidavit are junior to him and the respondents have violated the provisions of section 25-G & 25-H of the Act.

18. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner during December, 2007, by the respondents without complying with the provisions of the Act, is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondents.

Issue no.2.

19. Since, I have held under issues no.1 & 3 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is illegal and unjustified. Hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

20. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

21. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

22. In the present case, the petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Moreover, the petitioner had raised the present dispute after a gap of about 5 years, hence, the back-wages cannot be granted to him after such a long gap of 5 years. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

Issue No.4.

23. In support of this issue, no evidence has been led by the respondents which could go to show that the petitioner is stopped to file the present petition on account of his acts, conducts, deeds and acquiesces. Therefore, in the absence of any specific evidence on record, this issue is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 15th Day of May, 2017.

(Praveen)

By order,
(**Sushil Kukreja**)
Presiding Judge,

Industrial Tribunal-cum- Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref no. 140 of 2010.

Instituted on 22.11.2010.

Decided on 2.5.2017.

Army Public School Workers Union (AITUC) registration no. 864 Dagshai, District Solan, HP through its President/General Secretary.

Petitioner.

VS.

1. The Chairman, Army Public School (Shimla Giri Shrinkhla) Dagshai, District Solan HP.
2. Principal Army Public School Dagshai, District Solan, HP.

Respondents.

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

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether demands raised vide demand notice dated 16.7.2009 (copy enclosed) by the President and General Secretary, Army Public School Workers Union (AITUC) Regd., no. 864 Dagshai, District solan, HP 173210 before i) The Chairman, Army Public School (Shimla Giri Shrinkhla) Dagshai, District Solan HP ii) Principal Army Public School Dagshai, District Solan, HP are legal, justified and maintainable? If yes, to what service benefits and relief the workers of the Army Public School, Dagshai District Solan are entitled to from the above employer/management as per demand notice dated 16.7.2009? If not what are its legal effects?"

2. Briefly, the case of the petitioner union is that being a registered union under Trade Union Act, the petitioner union had an elected body and Shri Lekh Ram had been elected as President and Shri Sita Ram as Secretary and they have been duly authorized to file the present case. It has further been stated that the demands raised by the workers through its demand notice dated 16.7.2009 are genuine as the respondent school is registered under Army Welfare Education Society and the rules of Army Headquarter incorporated in the red book are applicable to the workers. It is also stated that the first demand raised by the workers regarding the implementation of 6th Pay Commission from the year 2006 is very genuine as the same has been implemented by the State Government as well as by the Centre Government and also by the other similar situated institutions governed by the Army Head Quarter, hence, the workers are also entitled to get all benefits as per 6th Pay Commission. The respondents have also withdrawn

certain benefits already given to the workers as per the 5th Pay Commission illegally and against the rules as once the benefits are given/allowed the same cannot be withdrawn without any justification and without hearing the effected parties and even the other similar situated institutions of the respondents situated at Dholakaun, Beas, Delhi Cant, Noida had already given the benefits to the workers working with them. When the 5th Pay Commission came the same was implemented by the respondents management and thereafter the workers were getting 100% DA as given to the Central Government employees from time to time but when 6th Pay Commission came the respondents have deducted the same from 100% to 50% and the deduction of 50% in the DA has been made arbitrarily and in violation of section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is stated that as per the report of 6th Pay Commission the same was to be implemented from the year 2006 but for the workers working with the respondents have not been given the benefits from the year, 2006, hence, they are entitled to receive the benefits of 6th Pay Commission since 1.1.2006. That the earlier case of the workers was also pending but during the pendency of the case the respondents management agreed to pay the benefits of 6th Pay commission since Jan., 2006 and the workers have not raised the matter regarding increase in wage with the respondents and they decided to withdraw their case pending before this Court. That the medical allowance given to the workers had been stopped arbitrarily by the respondents which deserves to be released and the medical allowance given @ ₹ 100/- deserves to be increased to ₹ 500/- per month or same may be paid on actual basis to the workers/their dependents. The medical allowance was increased as per settlement arrived in the year, 1998 from ₹ 30 to ₹ 100/- and now keeping in view the inflation in the price of medicine and other material the same deserves to be increased from ₹ 100/- to ₹ 500/-. That Shri H.S Rawat be given the salary of driver as given to the other drivers and that the washing allowance of the workers deserves to be increased from ₹ 40/- to ₹ 150/- as it is not possible to get the clothes washed in ₹ 40/- per month. That all the workers be given LTC as per the rules of Centre Government as all the employees of State as well as Centre Government are getting the same facility. That the workers are also entitled to TA and DA on actual basis. That the respondent management is not taking the work from the workers as per their status and post and the workers are even directed to do the Labour work, hence, the respondent be directed to stop taking the different work from the workers and that the respondent be directed to frame the promotion rules for workers as they used to work on the same post and framing of recruitment and promotion rules are beneficial to both the parties. That Shri Mohan Lal is working on daily wages with the respondent and his services deserves to be regularized as he has already completed more than 10 years of service in the year, 2008. Against this back-drop it has been prayed that the demands raised by the petitioner union vide demand notice dated 16.7.2009 be allowed.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objection has been taken that the claim petition/reference is neither competent nor maintainable. On merits, it has been asserted that the respondent school does not get any funds from the Centre Government or from the State Government and the school has to itself generate necessary funds and finances in order to run the School at Dagshai and the respondent school is a self-financing institution but under the control and supervision of Army welfare Education Society (hereinafter referred to as AWES). It is further asserted that the demand notice dated 16.7.2008 has been raised just to harass the respondent as the school is paying all the benefits which are entitled to its workers/employees as per Rules and Regulations applicable to the respondent school and the benefits of revised pay scale w.e.f. 1.4.2009 were duly given to the workers/employees of respondent school and even vide letter dated 27.4.2009 of Army Welfare Education Society, it was pen down that DA and HRA will be admissible maximum @ ₹ 50% of Central Government rates to employees employed on pay scale and no school would be given DA and HRA of more than 50% of Government rates and the increment and DA are not applicable to the employees employed on consolidated pay. It is also asserted that w.e.f. 1.2.2011, the respondent school started paying 100% DA to both teaching and non-teaching staff in terms of

decision taken by Army Welfare Education society vide meeting dated 10.2.2011 and 4.7.2011. It is denied that the action of the respondent is violative of section 9-A of the Act. It is further denied that other similar institution at Delhi Cantt. Noida, Beas and Doula Kaun are paying benefits of 6th Pay Commission. It is asserted that the new pay scales as per 6th Pay Commission has been implemented w.e.f. 1.4.2009 as per the directions and instructions of Army Welfare Education Society (hereinafter referred to as Society) and there is no provision for payment of medical allowances as per rules, regulations and instructions issued by the Society That Shri H.S Rawat was employed as a driver and is palced as Group-D category and his pay is fixed as per the Group D employees and additional increment can be given by the Chairman, School Management Committee in case of skilled and competent drivers and that keeping in view the financial position of the School there is no scope for increase in the washing allowance and even group D employees/workers have been given an option that they can get the uniforms washed and pressed from school washer man in the same amount. That there is no provision for payment of LTC in the Rules and Regulations laid down by the School and TA/DA is being paid to the workers who are being sent out of station in connection with the work of the School as per the Rules of the Society and the workers are being asked to perform the job for which they have been engaged and the regularization policy of Government to regularize the workers after 8 years or 10 years is not applicable to the respondent school and Mohan Lal is not entitled to his regularization in terms of the policy of Government of HP. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 8.11.2011.

10. Whether the demands raised vide demand notice dated 16.7.2009 by the President and General Secretary Army Public School workers union before respondents are legal and justified?

OPP.....

11. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner union is entitled to?

OPP.....

12. Whether the claim is not competent and maintainable?

OPR.....

13. Relief.

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

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

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Relief.	Reference answered in favour of the respondent and against the petitioner union.

Reasons for findings

Issues no.1.

8. To prove issue no.1, the petitioner union examined four PWs. PW-1 Shri Mohan Lal appeared into the witness box to depose that he was engaged as Chowkidar by the respondent since 1995 but he has been shown to be engaged as chowkidar w.e.f. 7.8.1996. He had worked continuously till 1.8.1998 and thereafter his services were terminated and he had filed a case and vide order dated 22.11.2005 Ex. PW-1/A he was ordered to be re-engaged by the Court and he had been working as chowkidar but he was being paid the salary of daily wager. He had completed 16 years with the respondent but his services have not been regularized till date. He prayed that he be regularized after the completion of 10 years along- with all consequential service benefits. In cross-examination, he expressed his ignorance that the Army Public School is neither under the control of State Government nor Central Government and that no aid is given by the Government to Army Public School.

9. PW-2 Shri Deva Nand has tendered in evidence his affidavit Ex. PW- 2/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice Ex. PW-2/C, the copy of chapter VII of red book mark X, copy of settlement mark B, copies of pay slip of the employees mark C and mark D and copy of the registration of the union Ex. PW-2/D. In cross-examination, he admitted that when the demand Ex. PW-2/C was raised he was not the President at that time. He denied that he was not authorized by the union to depose before the Court today. He admitted that Army Public School comes under the Army Welfare Education Society which is a registered society. He denied that the entire expenditure of the school is borne by the fees deposited by the students. He admitted that DA @ 100% was given w.e.f. 1.2.2011. He denied that all the benefits were given to the workers by the respondents w.e.f. 1.4.2009. He denied that as per the rules, the workers are not entitled for any medical allowances. He further denied that the work is being taken from the workers as per their posts. He also denied that there is no provision for LTC. He denied that the workers are being given TA and DA as per the actual expenditure. He expressed his ignorance that the worker Shri H. S Rawat falls under group D category and he was given the wages as per group D worker. He denied that the regularization policy of the State Government is not applicable in the Army Public School. He also denied that all the benefits have been given by the respondent to its workers.

10. PW-3 Shri R.P Thakur, UDC Army Public School Dagshai deposed that 5th Pay Commission was implemented by the School w.e.f. 1.4.1998. He produced on record the details of the students upto the year, 2012 Ex. PW-3/A and for the year, 2013 Ex. PW-3/B. He also produced on record the details of the collection of fees w.e.f. the year, 2000 to 2012 Ex. PW-3/C. He also produced the bill books Ex. PW-3/D to Ex. PW-3/M and the bill of expenditure w.e.f. the year, 2000 to 2012 Ex. PW-3/L. He further produced the balance sheet w.e.f. the year, 2000 to 2012 Ex. PW-3/O to Ex. PW-3/Z. He further stated that their school is registered under the Societies Act, the copy of which is Ex. PW-3/Z-1.

11. PW-4 Shri Gurjan Sharma, Army Public School Dhaulakaun, Delhi deposed that their school had implemented the report of 6th pay commission w.e.f. 1.1.2006 with respect to all workmen and all the benefits are being given as per the 6th pay commission. He further deposed that their school as well as Army Public School Dagshai is under the control of Army Welfare Society. In cross-examination, he admitted that the instructions issued by the Director of Education, Delhi is applicable to their school which is applicable to all other schools at Delhi.

He further admitted that Army Welfare Education Society had issued a letter dated 6.7.2009 mark Y which is applicable to the Army Public Schools at Delhi and Rajasthan.

12. On the other hand, the respondents have examined Col. Ravinder Singh, Bursar of respondent school, who tendered in evidence his affidavit Ex. RW-1A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence authority letter Ex. RW-1/B, the registration certificate mark X, minutes of meeting dated 10.2.2011 mark Y, letter dated 27.4.2009 mark Z, forwarding minutes noting sheet enclosing letter dated 7.7.2011 mark Z-1 & Z-2, letters dated 16.3.2011 and 18.3.2011 mark Z-3 and Z-4 and minutes sheet dated 19.2.2011 mark Z-5. In cross-examination, he denied that the Army Welfare Education Society has no direct control over the school. He further denied that the pay and allowances to the staff and workers are regulated by the Pay Commission of the Central Government. He admitted that the school had implemented the report of 5th and 6th pay commission of the central government. He further admitted that the 5th pay commission was implemented by the school from the date when it was implemented by the central government. He also admitted that the workers of the school were given the arrears w.e.f. the year, 1996 and 6th pay commission came into effect in the year, 2006 and the school had implemented the same in the year, 2009. He denied that the workers are entitled for the benefits of 6th pay commission from the year, 2006. He admitted that the medical allowance of ` 100/- per month and TA/DA was being paid to each worker before 6th pay commission. He denied that LTC was also given to the worker. He admitted that the Medical Allowance has been discontinued after 6th pay commission. He further admitted that the workers are not being given any promotion. He also admitted that for running the school in HP, their school is registered under the Societies Registration Act, 1860. He denied that different type of works are being taken from the workers. He admitted that Shri Mohan Lal is still on daily wages. He denied that all the demands raised in demand notice dated 16.7.2009 are genuine and the school is bound to accept the demands raised in the demand notice by the workers union.

13. The learned counsel for the petitioner contended that the respondent management had failed to implement the recommendations of 6th pay commission from the date when the same was announced by the Central Government i.e w.e.f. the year, 2006. He further contended that the respondent had implemented the recommendations of 6th pay Commission w.e.f. April, 2009 whereas the workers are entitled for the benefits of 6th Pay Commission w.e.f. Jan., 2006 when the same was implemented by the central government. He also contended that since the school of respondent falls under the control of Army Welfare Education Society, hence the workers working with the respondent are also entitled to get all benefits as given to other similar situated schools along-with all other benefits and keeping in view the sound financial condition of the respondent school, they are bound to accept the demands raised in the demand notice.

14. On the other hand, the learned counsel for the respondent contended that the Army Public school is under the control of Army welfare Education Society (hereinafter referred as AWES), New Delhi and does not get any financial aid either from the Central Government or from the State Government. He further contended that the demands raised by the workers union are frivolous and baseless and the workers are not entitled to any of the demands which have been raised in the demand notice.

15. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof it has become clear that the petitioner union had raised a demand notice dated 16.7.2009 Ex. PW-2/C and vide present reference, the demands as mentioned in points no. 1 to 11 of the demand notice Ex. PW-2/C have been referred for adjudication which are as under:

- i. That the workers who have completed 8/16/24 years of service should either be given next senior pay scale or they should be promoted to the next higher ranks.
- ii. The DA should be given to all the workers w.e.f. the year, 2006.
- iii. The benefits of the 6th pay commission should be given to all the workers w.e.f. 1.1.2006.
- iv. The medical allowance should be increased upto ₹ 500/- per month or expenditure on medical treatment should be paid on actual basis.
- v. The Driver Shri H.S Rawat who is the Group C worker should be paid wages at par with the drivers working under the government.
- vi. The washing allowance should be increased from ₹40/- to ₹ 150/-.
- vii. All the workers should be given LTC as per the rules of the government.
- viii. The workers who are sent on tour should be given TA/DA on actual basis.
- ix. That the work should be taken from the workers as per their status and post.
- x. That the Rules be framed for promotion of the employees.
- xi. That the services of daily wagger Shri Mohan Lal be regularized.

16. Now, let us examine the aforesaid demands raised by the petitioner union vide demand notice Ex. PW-2/C. Demands no 1 & 10 of the demand notice Ex. PW-1/C are that the workers who have completed 8/16/24 years of service should either be given next senior pay scales or they should be promoted to the next higher ranks and the Rules be framed for promotion of the employees. However, the school is functioning under AWES and there is no provision under society Rules either to give higher pay scales on completion of 8/16/24 years of service or for promotion of the employees to the next higher ranks. Hence, in the absence of any provision, no direction can be issued by this Court to the respondent for giving higher pay scale and for framing the Rules for promotion of the employees.

17. Demand no.2 pertains to payment of DA @ 100% to all the workers w.e.f. the year, 2006. In this respect it may be pertinent to mention here that in terms of Article 123 (4) of the letter dated 27.4.2009 mark Z, it has been recommended that DA and HRA will be admissible maximum @ 50% of the Central government rates to the employees and no school shall give DA/HRA more than 50% of the Central Government rates. In the Red Book i.e Rules and Regulations for Army Public School Vol-1 dated 19.3.2011 it has been mentioned that DA will be admissible minimum @ 50% of the Central Government rates and for any increase in the rate of percentage of DA to be paid to the employees, instructions will be issued by HQ AWES from time to time. Hence, in view of the Rules and Regulations of AWES, no direction can be issued to the respondent to pay DA to its employees w.e.f. the year, 2006.

18. Demand no.3 pertains to the payment of the benefits of the 6th pay commission to all the workers w.e.f. 1.1.2006. In his affidavit Ex. RW-1/A, the RW-1 deposed that the concurrence was taken from the workers and employees as to whether they wanted new pay/revised scales or they wanted to remain in the same pay scales. However, they opted for

revised pay scales as laid down by the AWES and the new pay scales to be paid in terms of 6th pay commission which had been implemented w.e.f. 1.4.2009 as per the directions and instructions of AWES vide letter dated 27.4.2009 mark Z and as such the respondent cannot be directed to implement the 6th Pay Commission w.e.f. 1.1.2006.

19. Demand no.4 is regarding increase in the medical allowance upto ₹ 500/- per month or the same should be paid on actual basis. However, the learned counsel for the petitioner failed to place on record any Rules and Regulations for the payment of medical allowance in the new pay scales which are applicable to the School. Therefore, in the absence of any Rules and Regulations in this respect, the medical allowance cannot be increased upto ₹ 500/-.

20. Demand no.5 is that Shri H.S Rawat Driver who is the Group C worker should be paid wages at par with the drivers working under the government. However, in his affidavit Ex. RW-1/A, it has been categorically stated by RW-1 that Mr. H.S Rawat was employed as a driver and his pay was fixed in group D employees as he is entitled to pay scale of group D employee. He further deposed that Mr. H.S Rawat has superannuated from service of School. No evidence has been led by the petitioner to prove that the driver Mr. H.S Rawat falls under the category of group C employees. Therefore, in the absence of any evidence on record, the respondent cannot be directed to grant the wages to the Driver H.S Rawat at par with the drivers working under the government.

21. Demand no.6 pertains to increase in washing allowance from ₹40/- to ₹ 150/- per month. In this respect, it has been mentioned in affidavit Ex. RW-1/A that the employees have been given the option that they can get their uniforms washed and pressed from the school washer-man and PW-2 admitted in cross-examination that the workers are ready to get the uniforms washed and pressed from the school washer-man.

22. Demand no.7 is pertaining to the grant of LTC as per the rules of government employees. However, the petitioner union has failed to place on record any Rules and Regulations of AWES for granting LTC to its employees. Therefore, in the absence of any Rules and Regulations in this respect, the same cannot be granted. In the Red Book, it has been mentioned that due to financial limitations Transport, Education and Leave Travel Allowances cannot be given to the employees of Army Public School. However, exemption of tuition fee as laid down in Article 284 for regular, probationer and contractual employees would continue to be given.

23. Demand no.8 is regarding the payment of TA/DA on actual basis. In his affidavit Ex. RW-1/A it has been categorically stated that TA/DA is being paid to the workers who are sent out of station in connection with the works of School as per the rules and regulations of AWES. No evidence to the contrary has been led by the petitioner. In the Red Book, it has been clearly mentioned that any employee of the Army Public School when detailed on duty to proceed to another station will be entitled to TA and DA as applicable to Central Government Employees.

24. Demand no.9 pertains to the fact that the respondent is not taking the work from the workers as per their status and post. However, in this respect no evidence has been led by the petitioner that the school is not taking the work from the workers as per their status and post. Therefore, in the absence of any evidence on record it cannot be said that the school is not taking the work from the workers as per their status and post.

25. So far as the demand no.11 is concerned which is regarding the regularization of daily wage Shri Mohan Lal, it may be pertinent to mention here that the respondent school is not functioning under the control and supervision of the State Government as such the notification issued by the State Government regarding the regularization of workers after eight years is not applicable to the School. Therefore, no direction can be issued to the respondent for regularization of the services of Shri Mohan Lal.

26. From the perusal of the entire evidence on record, it has become clear that AWES is a registered society under the Societies Registration Act, 1860 and the respondent school is functioning under the supervision and control of AWES which has published its rules and regulations in the Red Book applicable to all the schools running under its control. In his evidence by way of affidavit Ex. RW-1/A, RW-1 stated that the school is paying all the benefits to its employees as per the rules and regulations applicable to the Army Public School Dagshai which has been published by AWES in Red Book and the school has no power to make any Rules of its own. It has been admitted by PW-2 Shri Devanand, President of the union that the school is functioning under AWES. From the perusal of evidence on record it has also become clear that neither the State Government nor the Central Government provides any financial support to the respondent school or any other school functioning under AWES. The petitioner union has also failed to place on record any material which could go to show that the similarly situated schools in Himachal Pradesh or in the region are providing all the benefits to its employees as per the demand notice Ex. PW-1/C. PW-4 an official from Army Public School, Dhaulakaun Delhi has only given an oral statement that 6th Pay Commission has been implemented in their school w.e.f. 1.1.2006. However, he has not produced on record any documentary evidence in this respect. Therefore, in the absence of any documentary evidence on record his oral statement cannot be relied upon. Moreover, he has admitted that instructions issued by the Director of Education, Delhi are applicable to their schools and also to the other schools at Delhi. No cogent and satisfactory evidence has been led by the petitioner union that the workers are legally entitled for the demands as raised in the demand notice Ex. PW-1/C. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the demands raised vide demand notice Ex. PW-1/C are legal and justified. Accordingly, issue no.1 is decided in favour of the respondent school and against the petitioner.

Issue No.2

27. Since, the petitioner union has failed to prove issue no.1, this issue becomes redundant.

Issue no.3.

28. In support of this issue, no evidence has been led by the respondent which could go to show as to why the petition is not maintainable. Moreover, the petitioner union has filed the present claim pursuant to the reference sent by the appropriate government to this Court for adjudication. Accordingly, by holding it to be maintainable, this issue is decided in favour of the petitioner union and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner union fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 2nd day of May, 2017.

(Praveen)

By order,
(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 86 of 2005

Instituted on. 7.7.2005

Decided on 5.5.2017.

1. Sh. Shakti Chand, S/o Sh. Rohal Ram R/o Village Dudhar, PO Birjhari, Tehsil Barsar, Distt. Hamirpur, HP.
2. Sh. Raghuvir Dass S/o Sh. Jai Chand , R/o VPO Sakri, Tehsil Dehra, Distt Kangra, HP.
3. SH. Prithi Singh, (Deceased)
 - (a) Smt . Shakuntla Devi W/o Late Sh. Prithi Singh, R/o VPO Tiera , Tehsil & Distt Kangra, HP.
 - (b) Rajinder Singh S/o Late Sh. Prithi Singh R/o VPO Tiera , Tehsil & Distt Kangra, HP.
 - (c) Ajnita Thakur D/o Late Sh. Prithi Singh R/o VPO Tiera , Tehsil & Distt Kangra, HP.
 - (d) Surjit Singh, S/o Late Sh. Prithi Singh R/o VPO Tiera , Tehsil & Distt Kangra, HP.
4. Sh. Om Parkash,(deceased)
 - (a) Smt. Sukhversa Sharma W/o late Sh. Om Parkash, R/o Village Khera Sita Ram, P.O and Tehsil kalka, Distt. Panchukula, Haryana.
 - (b) Sonia Sharma W/o Lalit Sharma, D/o Late Sh. Om Parkash, R/o Village Khera Sita Ram, P.O and Tehsil kalka, Distt Panchukula, Haryana.
 - (c) Munish Sharma, S/o late Sh. Om Parkash, R/o Village Khera Sita Ram, P.O and Tehsil kalka, Distt Panchukula, Haryana.
 - (d) Vineet Sharma, S/o late Sh. Om Parkash, R/o Village Khera Sita Ram, P.O and Tehsil kalka, Distt Panchukula, Haryana.
5. Sh. Jagmohan S/o Sh. Bachan Ram R/o Village Tipra , P.O. Tehsil kalka, Distt Panchukula, Haryana.
6. Sh. Bakshi Ram, S/o Sh. Hari Singh, R/o Village Khera Sita Ram, P.O and Tehsil Kalka, Distt Panchukula, Haryana.

.....Petitioners

Versus

1. M/s Gabriel India Ltd. Parwanoo, Distt. Solan, HP through its General Manager.

2. The Factory Manager, M/s Gabriel India Ltd. Parwanoo, Distt Solan, HP.

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

For petitioners : Shri R.K Khidta, Advocate.

For respondent : Shri Dushyant Dadwal Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether the retirement of S/Shri Shakti Chand S/o Shri Rohal Ram, Raghubir Dass S/o Shri Jai Chand, Prithi Singh S/o Shri Jhandha Singh, Om Prakash S/o Shri Sant Ram, Jag Mohan S/o Shri Bachan Ram and Bakshi Ram S/o Shri Hari Singh by the management of M/s Gabriel India Ltd., Parwanoo, District Solan HP in violation of Certified Standing Orders and Sub Rule-3 of Rule 10-A of the Model Rules the Industrial Employment (Standing Orders) HP Rules 1973, Amendment 1991 framed under Industrial Employment (Standing Orders) Act, 1946 on the plea of stipulation of retirement age 55 years in the appointment letters of the aforesaid workmen is legal and justified? If not, for what service benefits including reinstatement in service the above workmen are entitled to?”

2. In pursuance of reference, aforesaid, all the petitioners have filed separate statements of claim. Petitioner Shakti Chand in his claim has stated that he was appointed as trainee operator by the respondent company on 7.7.1978 and his services were regularized w.e.f. 7.7.1978 and worked as such till 27.7.1998 when he was retired as operator Grade-VI at the age of 55 years. Petitioner Shri Raghubir Dass was appointed as operation maintenance on 2.6.1979 and worked as such till 10.12.2001 and he was retired as operation maintenance on attaining the age of 55 years. Petitioner Prithi Singh was appointed as operation maintenance in the month of November, 1978 and worked continuously till 6.4.1999 and he was retired as operation maintenance on attaining the age of 55 years. Petitioner Omparkash was appointed as operation maintenance on 19.6.1979 and he worked till 12.4.2002 and he was retired as operation maintenance on attaining the age of 55 years. Petitioner Shri Jagmohan Ram was appointed as welder on 26.3.1979 and he worked till 9.5.2000 and he was retired as welder on attaining the age of 55 years. Petitioner Bakshi Ram was appointed as Operation maintenance on 19.6.1979 and worked as such till 10.12.2001 and he was retired as operation maintenance on attaining the age of 55 years. Common facts in brief as narrated in all the claim petitions are that the retirement of petitioners at the age of 55 years is clear cut violation of Certified Standing Order Sub Rule -3 of Rule 10-A of Model Rules (Employment Standing Orders) HP Rules 1973, (hereinafter referred as to Rules) Amended 1991, framed under Industrial Employment (Standing Orders) Act, 1946 and in violation of section 4 of the Industrial Employment (Standing Orders) Act, 1946. That the workers working with the respondent company including petitioners have formed the workers union and in the year, 1998 the workers through union gave in writing regarding the age of retirement of workers to the Labour Commissioner, HP and one copy to the Hon^{ble} Chief Minister of HP, Labour Minister and Industry Minister of HP. That on 18.7.1998 the worker union had applied for modification of the Standing Orders as per the section 10 of the Industrial Employment (Standing Orders) Act, 1946 by mentioning therein that the age of retirement be increased from 55 years to 60 years in the standing orders of the Company which was allowed by the Certifying Officer on 17.11.1998 and the age of retirement of the workers was increased from 55 years to 60 years in the standing orders of the company and the standing orders of the company was accordingly modified. All the petitioners were given retirement by the company on attaining the age of 55 years and despite the requests of the petitioners, they

have not been allowed to work till the age of 60 years. It is further stated that against the order of Joint Labour Officer, the company had filed an appeal which was upheld by the Appellate Court and thereafter the respondent preferred a writ petition before the Hon'ble High Court in which the present petitioners were not made party. Against aforesaid back-drop a common prayer has been made by all the petitioners that the retirement orders at the age of 55 years passed by the respondent company be quashed and set aside and they be held entitled to work on their posts till the completion of 60 years as per certified standing orders of the company with all consequential service benefits including back-wages.

3. By filing separate common replies, the respondent management contested the claim of the petitioners wherein preliminary objections have been taken qua maintainability and that vide judgment dated 5.4.2006 passed in Appeal no. 86 of 2005 the order of certifying officer was set aside. On merits, it has been asserted that the petitioners have rightly been superannuated on attaining the age of 55 years and there is nothing illegal in the action of the respondent and the order passed by the Certifying Officer was illegal. The respondents challenged the order of certifying officer before the Hon'ble High Court which was set aside on the condition that fresh application for certification of the Standing Orders be made before the Certifying Officer which was done and thereafter the Certifying Officer again proceeded to decide the case without application of mind and this Court set aside the order passed by the Certifying Officer. That the decision in appeal is a subject matter of CWP no. 389/2006 which is pending before the Hon'ble High Court. There is no illegality in superannuating the petitioners at the age of 55 years. The respondent prayed for the dismissal of the claim petition.

4. By filing separate rejoinders, the petitioners reaffirmed their allegations by denying those of the respondent company.

5. Pleadings of the parties gave rise to the following issues which were struck on 21.11.2006.

1. Whether the retirement of the petitioners are in violation of Certified standing Orders and Model Rules of Industrial Employment (Standing Orders) HP Rules 1973 and also in violation of section 4 of Employment (Standing Orders) Act, 1946 on the plea of stipulation of retirement age of 55 years in the appointment letter of the petitioners is legal and justified?

OPP.....

2. If issue no.1 is proved in affirmative to what relief the petitioners are entitled to?

OPR.....

3. Whether the Court is no jurisdiction to entertain the present petition?

OPR.....

4. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

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

Issue no.1 No.

Issue no.2	Entitled to full wages with all other consequential benefits till the age of 60 years.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioners and against the respondents per operative part of award.

Reasons for findings

Issue no.1.

8. The learned counsel for the petitioners contended that the retirement of the petitioners on attaining the age of 55 years in place of 60 years tantamounts to unfair labour practice and the aforesaid action of the respondent company is against the provisions of Certified Standing Orders and Sub Rule -3 of Rule 10-A of the Model Rules the Industrial Employment (Standing Orders) HP Rules 1973, Amendment 1991 framed under Industrial Employment (Standing Orders) Act, 1946.

9. On the other hand, the learned counsel for the respondent contended that the petitioners were rightly superannuated on attaining the age of 55 years in accordance with law and there is no violation of Industrial Employment Standing Orders HP Rules, 1973 and amended Rules 1991

10. To prove issue no.1 the petitioner Shri Shakti Chand, appeared into the witness box as PW-1 to depose that he was appointed as Trainee Operator on 7.7.1978 and his services were regularized w.e.f. 7th July, 1978 and worked as such till 27.7.1998. PW-2 Shri Jagmohan Ram has stated that he was appointed as welder on 26.3.1979 and worked as such till 9.5.2000. PW-3 Shri Raghuvir Dass has deposed that he was appointed as welder on 2.6.1979 and worked as such till 10.12.2001. Shri Om Prakash PW-4 has stated that he was appointed as welder on 16.9.1979 and worked till 12.4.2002. PW-6 Shri Prithi Singh deposed that he was engaged as operator maintenance in November, 1978 and worked as such till 6.4.1999. All the aforesaid witnesses have stated that they have been retired at the age of 55 years and the workers union gave an application in the year, 1997 for amendment in the standing orders of the company and the respondent was called by the Certifying Officer and ultimately after hearing both the parties, the Certifying Officer accepted the demand of the workers union and age of retirement was fixed from 55 years to 60 years. Their retirement is illegal and they are entitled to work till the age of 60 years. In cross-examination, all the aforesaid witnesses have admitted that in the appointment letter the age of retirement is mentioned as 55 years. They denied that when they were retired they have filed appeal against the company and that the demand regarding increase the age of retirement from 55 to 60 years is not genuine.

11. Shri Dwarkanath, President of the union appeared into the witness box as PW-5 to depose that the workers of the respondent company formed an union which was duly registered vide registration no. 258 with the Registrar of Trade Union Shimla and petitioners S/Shri Shakti Chand, Raghuvir Dass, Jagmohan, Bakshi Ram, Prithi Singh remained the members of the union till their retirement and after their retirement they are not member of their union and the petitioners S/Shri Raghuvir Dass, Prithi Singh, Om Prakash, Jagmohan and Bakshi Ram were retired by the company when the appeal was pending before this Court. The retirement age of the workers as per standing orders as amended by the Certifying Officer is 60 years. In cross-examination, he admitted that the workers union has filed an application before the Certifying Officer for increase the age of retirement from 55 years to 60 years.

12. PW-7 Shri Bakshi Ram has stated that he was engaged as operator maintenance in November 1979 and continued as such till 10.12.2001 and he was retired at the age of 55 years. In cross-examination he admitted that he had received all the service benefits till the age of 55 years.

13. On the other hand the respondents examined one Shri Balwinder Singh, Assistant Manager, as RW-1, who stated that as per Standing Orders Ex. RA, of the company, the retirement age of the workman is 55 years and Ex. RB is the copy of settlement under section 12 (3) of the Act. The terms and conditions of the petitioners are given in their appointment letter Ex. PW-1/A and they were rightly retired after attaining the age of superannuation and Ex. RC is the copy of order passed by the Hon'ble High Court. In cross-examination, he admitted that the workers union was not registered in 1982-83. He admitted that the workers union made an application before the Joint Labour Commissioner-cum- Certifying Officer for amendment of the retirement age of the workman from 55 years to 60 years which was allowed by the Certifying Officer on 17.11.1998. He further admitted that the appeal preferred against the order of Certifying Officer before the Appellate Court was dismissed and that the respondent preferred a writ against the order of Appellate Court before the Hon'ble High Court. He also admitted that they moved an application before the Certifying Officer about the change of retirement age showing the age to be 60 years.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that all the petitioners got retired at the age of 55 years. Petitioner Shri Shakti Chand retired on 27.7.1998, Raghubir Dass on 10.12.2001, Prithi Singh on 6.4.1999, Om Prakash on 12.4.2002, Jagmohan Ram on 9.5.2000, Bakshi Ram on 10.12.2001. It may be also pertinent to mention here that during the pendency of the reference, two petitioners i.e Prithi Singh died on 6.5.2016 and Om Prakash died on 28.12.2016 and their legal heirs have been brought on record vide order dated 28.3.2017 passed by this Court.

15. From the perusal of the evidence on record, it has become clear that vide application dated 18.7.1998, the workers union had applied to the Certifying Officer for modification of the Certified Standing Orders to fix the age of retirement on superannuation on completion of 60 years of age by the workmen. Vide order dated 17.11.1998, Ex. PW-1/D, passed by the Certifying Officer-cum-Joint Labour Commissioner, HP the certified Standing Orders of the respondents company were ordered to be modified by raising the age of superannuation/retirement of workman from 55 years to 60 years. Against this order, the respondent company filed an appeal before the Appellate Authority and vide order dated 10.1.2003 Ex. PW-1/I, the appeal was dismissed. Thereafter, the respondent company had filed a Civil Writ Petition No. 263 of 2003 before the Hon'ble High Court against the order passed by the Appellate Authority and vide order dated 23.5.2005, Ex. PW-1/J passed by the Hon'ble High Court, the respondents were allowed to withdraw the writ petition with liberty to approach the Certifying Officer for submitting the fresh draft standing orders for certification especially with respect to the claim relating to the retirement age of the employee/workmen working with the respondent company and in compliance of the order passed by the Hon'ble High Court dated 23.5.2005, the respondents had submitted the draft standing orders for certification. Thereafter, on receiving the draft proposal of the respondent management, the certifying officer vide order dated 29.8.2005 Ex. PW-1/K had agreed to the demand of the union and accordingly certified that the age of retirement of the workers/employees on attaining the age of superannuation shall be on completion of 60 years by the workmen/employees in conformity with the provisions of age of retirement as prescribed in Sub-item (3) of Item 10-A of Schedule 1-A of Model Standing Orders under Rule 3 of the above said Rules framed under industrial Employment (Standing A Orders) Act, 1946. Thereafter, the respondent company had filed an appeal against the order of the certifying officer before

this Court and vide order dated 5.4.2006, the appeal of the company was allowed and the order of the certifying officer was set aside. Against this order, the workers union had filed a writ petition before the Hon'ble High Court i.e CWP no. 389 of 2006 which was allowed vide order dated 22.6.2007 Ex. PW-1/M and order passed by this Court dated 5.4.2006 was quashed and set aside and the order of certifying officer dated 29.8.2005 was upheld. Against this order, the respondent management had filed LPA no. 73 of 2007 before the Hon'ble High Court which was dismissed vide judgment dated 28.11.2007. Against this judgment passed by the Hon'ble High Court, the respondent company filed SLP no. 9163/2008 before the Hon'ble Supreme Court which was also dismissed on 5.1.2016.

16. Hence, from the aforesaid facts, it has become clear that the Joint Labour Commissioner-cum-Certifying Officer had accepted the demand of the workers union for increasing the retirement age and had certified that the age of retirement of the workmen/employees on attaining the age of superannuation shall be on the completion of 60 years and the order of certifying officer was upheld by the Hon'ble High Court vide judgment dated 22.6.2007 passed in CWP no. 389 of 2006 and thereafter affirmed in LPA no. 73/2007 dated 28.11.2007 by observing that the certifying officer had correctly certified the age as 60 years. The relevant portion of the aforesaid judgment passed by the Hon'ble High Court in LPA is as under:

“The learned Single Judge, in its judgment, had referred to some decisions of the Apex Court in which it was held that the present day tendency is to fix the age of superannuation at 60 years, unless the Tribunal feels that the work is particularly arduous or hazardous where the workman may lose efficiency earlier. A reference was made to several decisions where the retirement age was held to be 60 years. The learned Single Judge had also referred to the recommendations of the Central Pay Commission, but this recommendation of the Central Pay Commission cannot be said to be binding though these can be considered. But the nature of the job, working conditions etc. have to be considered by the Certifying Officer. Therefore, it cannot be said that the age of retirement cannot be less than 60 years but it depends upon the nature of the job, the work involved and other such conditions. Therefore, respondent No.2 had correctly certified the age as 60 years keeping in view all the factors and his satisfaction has to be given effect, who had considered all the relevant facts and, therefore, the order passed by the Certifying Officer did not suffer from any illegality, but the said order was wrongly set aside by the Appellate Authority and, therefore, the order passed by the learned Single Judge setting aside the order of the Appellate Authority does not call for an interference by this Court and as such liable to be upheld“.

The aforesaid Judgment passed by the Hon'ble High Court, stands affirmed by the Hon'ble Supreme Court. Therefore, needless to say that the aforesaid judgment passed by the Hon'ble High Court and affirmed by the Hon'ble Supreme Court is binding upon the parties to the dispute. From the perusal of the evidence on record, it has become clear that on 18.7.1998, the petitioner union had applied for the modification of standing orders with respect to increase in the retirement age i.e before the retirement of all the petitioners. Admittedly, all the petitioners were the members of the workers union who had approached the certifying officer for increasing the age of retirement from 55 years to 60 years. It has also come in evidence on record that all the petitioners have submitted representations to the management requesting the management to allow them to work till the age of 60 years before their retirement. However, despite the request of the petitioners all the petitioners were given retirement by the respondent management upon attaining the age of 55 years and at that time the dispute with regard to the fixation of retirement age as 60 years was still alive. Since, the Certifying Officer-cum-Joint Labour Commissioner had certified that the age of retirement of the workmen/employees on attaining the age of superannuation shall be on the

completion of 60 years and which order was ultimately upheld by the Hon^{ble} Supreme Court, therefore, the action of the respondent management in retiring the petitioners at the age of 55 years cannot be said to be legal and justified.

17. The learned counsel for the respondent next contended that one of the petitioners namely Shri Jag Mohan had filed a writ petition before the Hon^{ble} High Court i.e CWP No. 251 of 2000 on the ground that under the modified standing orders he could only be retired upon attaining the age of 60 years and the same was dismissed vide order dated 10.6.2005 Ex. RC and therefore, he is not entitled to any relief. However, this contention of the learned counsel for the respondents deserves to be rejected because in the aforesaid order passed by the Hon^{ble} High Court, his writ petition was not decided on merits and it was only dismissed as having been become infructuous by observing as under:

“The grievance of the petitioner is that he was born on 10th May, 1945 and under the modified standing orders he could only be retired after attaining the age of 60 years i.e on 10th May, 2005, but, respondent no.4 intends to retire him in 2000 on attaining the age of 55 years under the old standing orders.

The petitioner, even if modified standing orders are to be implemented, retires on 10.5.2000. This petition become infructuous. Dismissed as such.”

Therefore, since the order dated 10.6.2005 passed by the Hon^{ble} High Court was not passed on merits of the case, the contention of the learned counsel for the respondents that the petitioner Shri Jagmohan is not entitled to any benefit, cannot be accepted. Moreover, the benefit of the judgment passed by the Hon^{ble} High Court in LPA no. 73/2007 and affirmed by the Hon^{ble} Supreme Court has to be extended to the petitioner Jagmohan and he cannot be deprived of the same because he cannot be treated unequally and he has to be treated at par along-with other petitioners who have filed claim petitions before this Court.

18. Hence, in view of the judgment passed by the Hon^{ble} High Court, affirmed by the Hon^{ble} Supreme Court, it can safely be held that the action of the respondent management in retiring the petitioners at the age of 55 years is in violation of Certified standing Orders and Model Rules of Industrial Employment (Standing Orders) HP Rules 1973 and also in violation of section 4 of Employment (Standing Orders) Act, 1946. Accordingly, this issue is decided in favour of the petitioners and against the respondents.

Issue no.2

19. Since, the petitioners have succeeded in proving issue no.1, hence, it has to be seen as to what benefits the petitioners are entitled to.

20. Admittedly, all the petitioners have already attained the age of 60 years and they retired at the age of 55 years. However, in view of the judgment passed by the Hon^{ble} High Court in LPA no. 73/2007 dated 28.11.2007 vide which it has been held that the certifying officer had correctly certified 60 years as the age of retirement/superannuation of the workmen and the aforesaid judgment being upheld by the Hon^{ble} Supreme Court, all the petitioners had the right to remain in service till they attained the age of 60 years. Hence, all the petitioners are entitled for full wages and all other benefits w.e.f. the date when they were given retirement by the respondent management on completion of the age of 55 years till they attained the age of 60 years. Accordingly, this issue is decided in favour of the petitioners and against the respondents.

Issue no.3.

21. In support of this issue, no evidence has been led by the respondents which could go to show as to how this Court has no jurisdiction to entertain the present petition. Moreover, the petitioners have filed the present claims pursuant to the reference sent by the appropriate government to this Court for adjudication. Accordingly, by holding that this Court has jurisdiction to entertain the present petitions, this issue is decided in favour of the petitioners and against the respondents.

Relief.

As a sequel to my above findings/discussion, the claim petitions filed by the petitioners are allowed and as such the respondents are directed to pay full wages with all other consequential benefits to the petitioners w.e.f. the date when they were given retirement by the respondent management on completion of the age of 55 years till they attained the age of 60 years within a period of three months from today failing which the same shall carry interest @ 9% per annum from the date of award till the realization. The reference is answered accordingly in favour of the petitioners and against the respondents. File, after completion, be consigned to records.

Announced in the open court today on this 5th day of May, 2017.

(Parveen)

By order,
(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref no. 76 of 2016.

Instituted on 8.8.2016.

Decided on 30.5.2017.

Jitender Raj S/o late Shri Dila Ram R/o Village and P.O Khaira, Tehsil Sunni, District Shimla, HP.

Petitioner.

VS.

The Director of Horticulture, Himachal Pradesh Nav Bhar Shimlas-2, HP.

Respondent.

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

For petitioner : Shri R.K Khidtta, Advocate.

For respondent : Ms. Reena Chauhan, Dy. DA.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Sh. Jitender Raj S/O Late Sh. Dila Ram, Village & P.O. Khaira, Tehsil Sunni, Distt. Shimla, H.P. during February, 1996 by the Director of Horticulture, Himachal Pradesh at Nav Bahar, Shimla, H.P. who had worked as beldar for 41 days, 95 days and 50 days during the years, 1994, 1995 and 1996 respectively and has raised his industrial dispute after about 17 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping to view working days of 41 days, 95 days and 50 days during the years, 1994, 1995 and 1996 respectively and the delay of about 17 years is raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that w.e.f. the year, 1994, he was engaged as beldar by the respondent and he worked as such till 19.2.1996 and thereafter w.e.f. 20.2.1996, his services were illegally terminated without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as neither any notice nor pay in lieu of that notice had been paid to him. It is further stated that the petitioner visited the office of the respondent number of times after his oral termination and requested for his re- engagement and also gave in writing to the department but except assurances, he was not re- engaged. That while terminating the services of petitioner, the provisions of sections 25-F, 25- G, 25-H and 25-N of the Act was not followed by the respondent and his work and conduct was always appreciated by the concerned official and nothing contrary was ever conveyed to him. That the petitioner had completed 240 days in each calendar year and junior persons to him are still working with the respondent department. It is further stated that the work for which the petitioner was engaged is still available with the respondent and that he is unemployed w.e.f. 20.2.1996 and is nowhere gainfully employed and as per the policy of the State Government the services of the petitioner deserves to be regularized on completion of eight years of service. Against this back-drop a prayer has been made that the termination order dated 20.2.2016 be set aside and the respondent be directed to re-instate the petitioner in service along-with all consequential benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability as the petitioner had not completed 240 days in any of the calendar year and that the claim is barred by limitation as the petitioner has approached this Court after a gap of 17 years. On merits, it has been asserted that initially the petitioner was engaged as daily paid labourer to assist the other trained official of the respondent department for demonstrating the pruning of apple tree to the farmers of Shimla District under the guidance of Horticulture Extension Officer during winter season only for the year, 1994 to 1996 subject to availability of work and funds. It is denied that the petitioner had approached the respondent till 2013 for his re-engagement but he served demand notice upon the respondent during the year, 2013 i.e after a gap of 17 years. The petitioner had only worked for 100 days and 85 days during the winter season of two spells and he had not completed 240 days in any calendar year and no junior to him had been engaged by the department to execute the work assigned to him as the same was conducted from the regular beldar of the department and the persons mentioned in Annexure P-1 had been engaged in different field office of the department from time to time subject to availability of work and funds and some persons have been engaged consequent upon the Court orders and some persons have been engaged on compassionate grounds. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 18.1.2017.

1. Whether the termination of the services of the petitioner during the month of Feb., 1996 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP.....

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

OPP.....

3. Whether the present petition is not maintainable as alleged?

OPR.....

4. Whether the petition is barred by limitation?

OPR.....

5. Relief.

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

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issue no. 1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent department and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, Ld. Dy. DA for the respondent contended that the services of the petitioner had been engaged only for specific work subject to availability of work and funds during winter season and he had not completed 240 days in any calendar year. She further contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of information supplied under RTI Act by the respondent department Ex. PW-1/B. In cross-examination, he denied that he was engaged as daily paid labour/casual labour for seasonal work during winter season for pruning of apple trees. He admitted that he had worked from 1994 to 1996. He denied that he had only worked for 100 days during the year 1994-1995 and for 85 days during the year 1995-96 and that he had not completed 240 days in any calendar year. He further denied that he left the job at his own and that he had never approached the department till the year 2013. He also denied that the persons mentioned in Ex. PW-1/B were not his juniors. He admitted that no letter has been placed by him on record which was given by him to respondent for his reengagement.

11. PW-2 Shri Chander Mohan, Superintendent Grade-1 has brought the summoned record and deposed that the department had engaged the daily paid labourers after 1.1.1994 as per the list Ex. PW-1/A which is true as per record. He further deposed that after December, 1996, the department had also engaged daily paid labourers and out of them various labourers are still working. He also deposed that the work which the petitioner was doing is still available. In cross-examination, he stated that the petitioner had worked for 185 days from November, 1994 to Feb., 1996 and he had never completed 240 days in a calendar year. He further deposed in cross-examination that the persons mentioned in list Ex. PW-1/B are the daily paid labourers whereas the petitioner was engaged as casual worker and the department had not engaged any worker for doing the work of pruning after December, 1996.

12. The respondent has examined one Shri B.S Guleria, Dy. Director Horticulture (P&P) as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B, mandays chart Ex. RW-1/C, detail of daily paid labourers Ex. PW-1/D and order dated 11.12.2015 mark RX. In cross-examination, he denied that the petitioner had worked continuously w.e.f. the year 1994 to 19.2.1996 and that his services were terminated w.e.f. 20.2.1996. He admitted that the information supplied under RTI Act Ex. PW-1/B is correct. He further admitted that some new persons have been engaged after 20.2.1996 and many of them are still working with the department and some of them have been regularized. He also admitted that no notice was issued to the petitioner for resumption of his duties and that no enquiry was held against him. He denied that the services of the petitioner were illegally terminated.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, the first question which arises for consideration before this Court is as to whether the petitioner has completed 240 days in each calendar year and in 12 calendar months preceding his termination. The case of the petitioner is that he had completed 240 working days in each calendar year but he has failed to produce any record which could go to show that he had worked for 240 days in each calendar year and in preceding twelve months prior to his termination. The mandays chart Ex. RW-1/C, shows that the petitioner had worked with the respondent for 41 days in the year, 1994, 94 days in the year, 1995 and 50 days in the year, 1996. There is no material on record which could show that the petitioner has completed 240 working days in each calendar year and in twelve calendar months preceding his termination. In 2009 (120) FLR 1007 incase titled as *Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*, the Hon^{ble} Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

In AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amar Singh*, the Hon'ble Supreme Court has held that:—

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in each calendar year and in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Therefore, in view of my foregoing discussion and also in view of law laid down (supra), the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The further case of the petitioner is that after his termination, the respondent had retained his juniors in service and engaged fresh hands in violation of the provisions of section 25-G and 25-H of the Act. The case of the respondent is that the petitioner was engaged as a casual labourer subject to the availability of work and funds to undertake seasonal work especially in winter seasons to assist the other trained officials of the department for doing the work of pruning of Apple Trees etc. PW-2 had produced on record the list of daily paid labourers Ex. PW-2/A who were engaged after 1.1.1994 and he specifically stated in cross-examination that the persons mentioned in the list Ex. PW-2/A, are the daily paid labourers whereas the petitioner was engaged as casual labourer. He also stated that the daily paid labourers who have fulfilled the criteria as per the policy of the State Government have been regularized and the department had not engaged any worker for doing the work of pruning after December, 1996. It was for the petitioner to prove by leading cogent and satisfactory evidence on record that he was engaged as a regular beldar and not as a casual worker. However, no evidence has been led by the petitioner in this respect. No appointment letter or any other document has been placed on record by the petitioner to prove that he was appointed as a regular beldar. In (2006) 6 SCC 221, Reserve Bank of India Vs. Gopinath Sharma and others, it has been held by the Hon'ble Supreme Court that the workman not appointed to any regular post but engaged on the basis of need of work had no right to the post. The relevant extract of the aforesaid judgment is reproduced as under:

“22. In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day to-day basis and he has no right to the post and that his dis-engagement cannot be treated as arbitrary.”

.....
The High Court completely erred in relying on Section 25 G of the I.D. Act while not holding that the workman has been retrenched within the meaning of Section 25F and thus misdirected itself about the applicability of provisions of Section 25G of the I.D. Act even if it does not involve retrenchment. The High Court also failed to consider that the inclusion of the name in the waiting list for appointment as 'Ticca

Mazdoor' on day to-day basis does not confer any right for regular appointment or to hold any post".

Since, the petitioner was only engaged as casual labourer for doing the seasonal work in winter seasons and was doing the work intermittently, therefore, the provisions of sections 25-G and 25-H are not attracted to the present case. Hence, keeping in view the law laid down (supra) and also in view of the entire evidence on record, it can safely be held that the petitioner has failed to prove that his alleged termination during Feb., 1996 was illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no.2.

15. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3.

16. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.4.

17. In support of this issue no specific evidence has been led by the respondent which could go to show that as to how the present petition is barred by limitation. The law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-processing Service Society Limited and Another.* that:-

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

It has also been held by the Hon'ble Supreme Court in *Gurmail Singh Vs. Principal Government College of Education and others*, (2009) 9 SCC 496 that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue. In a latest judgment, the Hon'ble Supreme Court in 2014, 10 SCC 301 titled as **Raghubir Singh Vs. General Manager, Haryana Roadways Hissar** has held that Limitation Act has no application to reference made by the appropriate government to Labour Court/Industrial Tribunal for adjudication of existing industrial dispute. The relevant portion of the aforesaid judgment is reproduced as under:

“16 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 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 supplied).

17 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”.

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of May, 2017.

(Parveen)

By order,
(Sushil Kukreja)
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref no. 62 of 2008.

Instituted on 20.11.2008.

Decided on 2.5.2017.

1. President Virgo & Tigaksha Kamgar Sangh Regd., no. 1062 (BMS)VPO Shoghi, Tehsil & District Shimla, HP.
2. President Virgo Tigaksha Workers Union, Shoghi District Shimla, HP.
3. President Tigaksha Virgo Workers Union Regd., no. 1099 VPO Shoghi, District Shimla, HP.

Petitioners.

VS.

The Director (Operations)/ Factory Manager/Chief Executive Officer M/s Tigaksha Metallic Pvt. Ltd., Plot no. 49, 102-103, Shed No. 1-8, Electronic Complex, Industrial Area Shoghi, Tehsil & District Shimla, HP.

Respondent.

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

For petitioner : None.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

1. "Whether the closure of the establishment /Factory namely M/s Tigaksha Metallic Pvt., Ltd., Shoghi w.e.f. 1.7.2008 due to the death of one workman and injury to 5 workmen due to the bullets fired by some persons on the workers and consequential incident took place on 30.6.2008 is legal and justified?"
2. "Whether not to start the work/production within reasonable time by the management of the factory namely M/s Tigaksha Metallic Pvt., Ltd., Shoghi District Shimla is proper, legal and justified? If not, to what relief of service related benefits including continuity in service of all the workers including contract labour who were on the roll of the company are entitled?"
3. "Whether not to pay the earned wages to the workers, who worked during the month of June, 2008 is legal and justified? If not, to what relief along-with the rate of interest the workers are entitled for?"

2. The petitioner no.1 filed statement of claim alleging therein that the workers union is a registered union in the name of Virgo Tigaksha Workers union bearing registration no. 1048 from the Registrar Trade Union, HP and since the workers union did not perform well in the beginning, the workers of industry formed a new workers union under the name Vigro Tigaksha Kamgar Sangh registration no. 1062. It is further stated that the demand charter dated 10.4.2007 raised by the workers union was not considered by the respondent and on 26.7.2007, the management picked 26 workmen one by one and kicked them out of the premises forcibly with the help of the security guards and when the representatives of the union put their submissions to the employer, they were also kicked out from the gate. Thereafter, on 27.7.2007 a letter was sent to the Labour Commissioner by the General Secretary of the union, who referred the matter to Conciliation Officer but the matter could not be settled as the respondent management did not participate in the conciliation fixed on 3.8.2007. Thereafter, the Joint Labour Commissioner issued notice to the management in order to attend the conciliation at his office on 6.8.2007 on which day Shri Paras Doger, Advocate sought adjournment for conciliation on 7.8.2007 and on the next date the respondent management failed to attend the conciliation meeting and thereafter on the same day, Joint Labour Commissioner personally visited the factory and he was informed that out of 500 workers only 70 workers were there in general shift and the workers affiliated to BMS and CITU informed him that the management has declared lock-out and not allowing the workers to enter the factory. The Joint Labour Commissioner after carrying out proper spot inspection/meeting with the workers and management submitted his report to Labour Commissioner, who after considering the report of labour Officer and Joint Labour Commissioner, prohibited the strike/lock-out in the factory vide order dated 14.8.2007. It is further stated that the management chargesheeted nine workers, who were the office bearers of the union and enquiry officer was appointed and the enquiry proceedings were started against them but the enquiry officer concluded the enquiry without the existence of Model Standing Orders and submitter her report dated 16.5.2008 and thereafter on 30.6.2008 the workers gathered in front of the industry in a gate meeting for which an early intimation was given to the administration and the Police and had a talk with the management and suddenly the security guards of the company came out and opened the fire on the workers upon which some workers got injured and one of the workman Amarjeet got died in the incident and all the security guards are under trial in the FIR no. 162 of 2008 registered under sections 302, 307, 109 read with section 34 IPC and section 25 (54) of the Arms Act, 1959. On 28.7.2008, the Labour Commissioner wrote a letter to the respondent for conciliation meeting on 9.7.2008 but none was present on that day and thereafter the notices were published in the Tribune on 26.7.2008 to all the Directors for 1.8.2008 at 11:00 AM but of no avail. The respondent intentionally played the tactics of delay in starting the establishment by keep on watching and waiting the matter on one pretext or the other and by showing loss, the respondent cannot get rid of the responsibilities and after the appointment of chartered engineer and submission of the report dated 23.8.2008, the company had to start its production on or before 23.2.2009 but the respondent has again created the problem of finance and electricity. It is also stated that in the agreement with the nine workers dated 6.7.2008, it was agreed that both the parties would withdraw all the cases pending between them. The respondent company compelled the workmen to withdraw their cases pending before this Court but failed to withdraw the cases against the workmen. Against this back-drop it has been prayed that the closure of the establishment/factory by the respondent be declared illegal and unjustified and the workers be held entitled for the salary including all the consequential benefits after prohibition of lock-out by the orders of Labour Commissioner.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the claim petition is neither competent nor maintainable. On merits, it has been asserted that the respondent company entered into a settlement with Virgo Tigaksha workers union registration no. 1048 which was enforced w.e.f. 1.7.2006 to 30.6.2009 and Virgo Tigaksha Workers union at no point of time had given any

notice qua the breach of terms of settlement or any notice for terminating the said settlement as required under section 19 of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). The petitioner union in a pre planned manner damaged and set on fire and destroyed the moveable and immovable property of the respondent company and also beat up the officials of the company. Settlement dated 5.9.2006 was in operation and existence and one of the clause in the aforesaid settlement was that during settlement dated 5.9.2006, no new demand would be raised which would create financial burden. It is denied that the workers have been kicked out from the premises of the factory forcibly with the help of security guards. The letter dated 27.7.2007, is false and fabricated. It is asserted that in July, 2007, the workers alleging to be the members of the petitioner union engineered an illegal strike restored to grave and serious misconduct of assault, damage to the property of the company and indulged in the act of threatening innocent workers including lady workers from doing the duty and also forcibly stopped the buses of the company, hence, show cause notices and chargesheets were issued and disciplinary enquiry was conducted in accordance with the principles of natural justice and charges stood proved and second show cause notice was issued and since the industrial dispute was pending before this Court, hence, applications under section 33-2(b) of the Act was moved for permission to terminate the services of the delinquent workers and during the pendency of aforesaid applications, the workers of petitioner union indulged in the act of rioting, arson, damaging the property of the respondent. It is also asserted that on 2.8.2007, the learned Civil Judge (Senior Division, Court no.2 Shimla passed an injunction order restraining the members, office bearers and Bhartiya Mazdoor Sangh from raising slogans, holding demonstrations, dharnas blocking the ingress or egress and not to interfere in day to day working and to threaten the workers and the said order was subsequently modified to include agents, hiring lings, goons etc. but the said order was flouted by the workers of petitioner union. It is asserted that illegal strike was engineered by the members of petitioner union and at no point of time any lock-out was declared. The workers of petitioner union through their associates assembled a mob of 500-600 miscreants in front of the respondent company and restored to slogans shouting, using of abusive language and committed criminal trespass by forcibly entering the industrial premises with lathies, iron roads, crow bars, bamboo sticks and missiles etc. They made forcible entry into the premises and indulged in rioting and damaging the property and destroyed the entire administrative block including plant and machinery and fearing imminent death at the hands of mob, the security guards in self defence were forced to open fire in the air resulting in the sad demise of a workman who was from a different company. Thereafter, the mob rushed to Tigaksh Metalics Pvt. Ltd., and caught hold of Mr. V.K Tripathi, CEO and dragged him from his office and mercilessly started beating him with iron roads, bamboo sticks etc., in front of the Police Officials and even Senior Managers were also beaten up by the mob and some of the officials were kidnapped. Mr. Modak had to run for his life but he was beaten and barbaric acts of pressing cigarette butts by the workers and members of BMS and his head was also tonsured by the members. The respondent lodged a FIR at the Police Station, West Shimla and also the matter was intimated to Labour Commissioner vide letters dated 2.7.2008, 7.7.2008 and 11.7.2008. The respondent company had endeavored to comply with the minutes of meeting dated 2.9.2010 but the members and office bearers of the petitioner union have created bottleneck at every step. It is further asserted that the settlement which has been effected between workers and the respondent before this court has attained finality. The respondent prayed for the dismissal of the claim petition.

4. It may be pertinent to mention here that the statement of claim has only been filed on behalf of President Virgo & Tigaksha Kamgar Sangh registration no. 1062 whereas the appropriate government had sent the reference on behalf of three petitioners i.e President Virgo & Tigaksha Kamgar Sangh Regd., no. 1062 (BMS)VPO Shoghi, Tehsil & District Shimla, HP (2) President Virgo Tigaksha Workers Union, Shoghi District Shimla, HP (3) President Tigaksha Virgo Workers Union Regd., no. 1099 VPO Shoghi, District Shimla, HP. After receiving the

reference, aforesaid for adjudication notices were sent to all the petitioners but despite having been served, petitioner"s no. 2 & 3 failed to appear before this Court and to file statement of claim.

5. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 29.9.2010.

14. Whether the closure of the factory namely M/s Tigaksh Metalic Pvt. Ltd., Shoghi w.e.f. 1.7.2008 is illegal and unjustified as alleged?

OPP.....

15. Whether not to start work/production within reasonable time by the management of said factory is illegal, improper and unjustified as alleged?

OPP.....

16. If aforesaid issues are proved or any one of them, to what service benefits all the workers including contract labour who were on the roll of the company are entitled to?

OPP.....

17. Whether not to pay earned wages to the workers, who had worked during the month of June, 2008 is illegal and unjustified?

OPP.....

18. If issue no.4 is proved to what relief the workers are entitled to?

OPP.....

19. Whether the claim of the petitioners is not maintainable as alleged?

OPR.....

20. Relief.

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

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

Issue no.1 No.

Issue no.2 No.

Issue no.3 Decided accordingly.

Issue no.4 Not proved.

Issue no.5 Becomes redundant.

Issue no.6 No.

Relief. Reference partly answered in favour of the petitioners and against the respondent.

Reasons for findings

Issues no.1 & 2.

8. Being interlinked and correlated both these issues are taken up and discussed together for decision.

9. To prove theses issues, the petitioner union examined one Shri Ashok Kumar as PW-1 who tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice dated 10.4.2007 mark P-1, copy of letter dated 27.7.2007 mark P-2, the copy of order passed by the Labour Commissioner Ex. PB, copy of terms of reference dated 13.8.2007, made to this Court Ex. PC, the copy of letter dated 3.6.2008 mark P-3, copy of letter dated 28.6.2008 mark P-4, the copy of settlement dated 6.9.2008 mark P-5 and the copy of order passed by the Labour Commissioner on 18.11.2008 Ex. PD. In cross-examination, he admitted that he is not the member of workers union Virgo Tigaksha Kamgar Sangh registration no. 1062, BMS and that he had not filed the list of the executive members of the union. He further admitted that he was not authorized to give statement on behalf of Virgo Workers union through resolution. He denied that he was not the employee of respondent company. He admitted that all the settlements between the management and workers were effected with Virgo Tigaksha Workers union registration no. 1048 (INTUC). He denied that the company had not retrenched the services of 26 workers in the year, 2007. He further denied that the members of petitioner union, their associates, agents, assembled a mob of 500- 600 miscreants and raised slogans and damaged the property, machinery and computers etc., of both the companies. He also denied that after 30.6.2008, the members of BMS, their associates, agents and miscreants associates with them had created atmosphere of fear and were not allowing the management officials to the units and also the workers who were interested to enter in the premises. He denied that after the incident dated 30.6.2008, BMS and its associates did not allow to start the work in the company and allow the workers to work.

10. On the other hand, the respondent has examined one Shri Rajesh Kosh, Manager Legal as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B, copy of complaint mark 1, copy of Court order mark 2, notification mark 3, Commissioner order mark 4, Labour Officer letter mark -5, letter dated 2.8.2007 mark 6, letter dated 23.6.2008 mark 7, letter dated 30.6.2008 mark 8, letter dated 23.6.2008 mark 9, newspaper cutting mark 10, FIR mark 11, photocopy of documents mark 12 to 28, report dated 8.7.2008 mark 29, letter dated 5.9.2006 mark 30, letter dated 7.9.2006 mark 31, letter dated 24.8.2006 mark 32, letter dated 16.8.2006 mark 33, letter dated 26.12.2006 mark 34, letter dated 30.10.2006 mark 35, letter dated 12.6.2007 mark 36, letter dated 27.6.2007 mark 37, notification dated 13.8.2007 mark 38, order dated 14.8.2007 mark 39, show cause notice mark 40, reply to show cause notice mark 41, letter dated 28.7.2007 mark 42 and letter dated 28.6.2008 mark 43. In cross-examination, he admitted that he was given authorization by the company on 5.7.2011 and prior to that he was the Advocate of the company. He further admitted that the workers of the company namely Rajiv Kumar, Rajesh and Rohit had compromised their cases before this Court and in those cases he was the Advocate of the company. He also admitted that at the time of dispute he was neither the authorized representative nor the Advocate of the company. He further stated that on 30.6.2008, the members of the union had damaged the property of the company and thereafter the factory was closed. He denied that the union had given a letter for conducting the gate meeting prior to 30.6.2008. He also admitted that the security personnel of the company had resorted to firing and a case under section 302 IPC is pending against them in Sessions Court. He volunteered that the firing was done in self defence. He also admitted that Pankaj Choudhory, Ashok Kumar, Sunil Kumar, Ravi Kant and Khem Chand were the workers of the company. He denied that after the incident, the compensation was paid to the workers. He

admitted that during the conciliation proceedings, nine suspended workers were given compensation to the tune of ₹ 1,50,000/- each as per the settlement. He also admitted that no other workman was given compensation as per the settlement. He denied that other workers are entitled for compensation as per the settlement. He denied that the workers are entitled for continuity in service and other benefits.

11. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof it has become clear that the factory of the respondent was closed down on account of unavoidable circumstances beyond the control of the employer. From the perusal of the record, it has become clear that there was a settlement under section 18(3) of the Act between the management of Virgo Appliances Pvt. Ltd., Management of Tigaksha Metalics Pvt. Ltd and Virgo Tigaksha Workers Union registration no. 1048 (INTUC) dated 5.9.2006 mark RP-30 which had to remain in operation w.e.f. 1.7.2006 to 30.6.2009. In his evidence by way of affidavit Ex. RW-1/A, RW-1 has categorically stated that all the workers were availing the benefits of settlement dated 5.9.2006 and no question of raising of demand notice dated 4.7.2007 arise. It has also been averred in the affidavit Ex. RW-1/A, that one of the clause in the settlement dated 5.9.2006 was that during settlement no new demand would be raised which would create financial burden. From the perusal of the affidavit, it has also become clear that an enquiry was conducted against the workers namely S/Shri Laiq Ram, Pankaj Choudhory, Mehar Chand, Tilak Raj, Inder Singh, Ajay Thakur, Om Dutt, Rakesh Kumar and Khem Chand for resorting to grave and serious misconduct of assault, damage to the property of the company and indulging in act of threatening innocent workers including lady workers from doing the duty and resorting to illegal strike in July, 2007 and on the charges having been proved against them, an application under section 33-2(b) of the Act was moved by the respondent for permission to terminate the services of the aforesaid workers. However, during the pendency of the aforesaid application, a mob of 500-600 persons assembled on 30.6.2008 in front of M/s Virgo Appliances Pvt. Ltd., and M/s Virgo Tigaksha which included the aforesaid delinquent workers and also the members and office bearers of the workers union affiliated to Bhartiya Mazdoor Sangh and they committed criminal trespass by forcibly entering into the factory premises and also damaged the property of respondent company. The mob had also beaten the Senior Managers/Officials of the company and also destroyed the entire administrative block which resulted in the loss of ₹ 5.54 crores to Tigaksha Metalics Pvt. Ltd. Resultantly the security guards had to fire the bullets in the air resulting in the sad demise of a worker. It has also come in evidence that vide letter dated 23.6.2008 mark 7, the Director General of Police was requested by the respondent to provide adequate police protection and vide letter dated 30.6.2008 mark 8, the SHO Boileauganj was requested to take legal action against the suspended workers who had allegedly stopped the working employees from performing their duties and stopped the production by sitting on "Dharna" on 28.6.2008. However, despite prior intimation given to the Police only one Sub Inspector and two Constables were sent and they could not stop the mob resulting in the rioting etc.

12. RW-1 was cross-examined at length by the learned counsel for the petitioner. However, nothing favorable could be elicited from his lengthy cross-examination which may impeach his credibility. It is also not disputed that an FIR no. 162/2008 was registered under sections 302, 307, 109 read with section 34 IPC against the security guards of the company and an FIR mark 11 was also lodged by the respondent on 1.7.2008 at the Police Station West Shimla against nine suspended workers. Hence, the perusal of the entire evidence on record shows that there was a serious law and order situation in and around the factory premises and the workers who were terminated were holding "Dharna", shouting slogans and were interfering in the ingress and egress of the workers/visitors and they have stopped the working employees from performing their duties but despite the fact that the respondent company demanded adequate security from the District Administration/ Police authorities the same was not granted which

resulted in the incident dated 30.6.2008 when some of the workers caused damage to the property of the respondent company and had beaten up the senior managers/officials of the company resulting in the loss of about ₹ 5.54 crores to the company and sad demise of a worker due to the firing of the bullets by the security guards. Hence, it can safely be held that the closure of the establishment/factory w.e.f. 1.7.2008 was not on account of act and conduct of the respondent but was due to the circumstances which were beyond the control of the management and cannot be said to be illegal or unjustified in any manner.

13. After the incident dated 30.6.2008, the respondent management had written a letter dated 2.7.2008 mark RP-1 to Labour Commissioner wherein it was mentioned that the workers were not allowing anybody to enter into the factory premises and they were continuing with the illegal activities and there was an atmosphere of fear and tension. Vide letter dated 7.7.2008 mark RP-2, the Secretary Labour & Employment, Labour Commissioner, Dy. Commissioner and Superintendent of Police were requested to direct the District Administration to create conducive atmosphere so that the company officials can go to the company and start process of repairing of the infrastructure/machines/computers etc. destroyed in the incident dated 30.6.2008. Vide letters dated 19.7.2008 mark RP-4, letter dated 29.7.2008 mark RP-5, the Police as well as Government authorities were requested to provide total protection to the employees who were working at the factory of the respondent located at Shoghi. Vide letters dated 17.7.2008 mark RP-6, dated 19.7.2008 mark RP-7, dated 19.7.2008 mark RP-8, dated 19.7.2008 mark RP-9, the respondent management had also requested the Government authorities to provide total protection to start the work. Vide letters dated 21.7.2008 mark RP-11, letter dated 21.7.2008 mark RP-12, letter dated 17.7.2008 mark RP-13 the respondent management had requested the government authorities to provide them security in the factory premises. The respondent management had also requested the police authorities vide letters dated 27.7.2008 mark RP-17, letter dated 22.7.2008 mark RP-18 letter dated 13.11.2008 mark RP-21, letter dated 16.5.2009 mark RP-22 to provide security in the factory premises. The respondent management had also written letters to Hon^{ble} Chief Minister and Dy. Commissioner, Shimla vide mark RP23 to mark RP-25 for grant of bailout package/financial assistance and enforcement of law so that the work/production in the factory could be started.

14. Hence, from the perusal of the evidence on record it has become clear that the respondent was ready and willing to start its factory/production but adequate security was not given by District Administration and there was no conducive atmosphere around the industrial premises and the workers who were willing to work were prevented by miscreants and the members of the workers union and as such the respondent could not start its work/production. Hence, from the evidence on record it has become clear that the closure of the establishment/factory and not to start work/production within the reasonable time was neither illegal nor unjustified. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue no.3.

- (8) Now, it has to be seen as to what benefits the workers of the company are entitled. It is not in dispute that at the time of the closure of the company, the workers employed by the respondent were more than 100 on an average per working day, therefore, the provisions of Chapter V-B of the Act would apply in the present case. From my findings given on issues no. 1 & 2, above, it has become clear that the establishment of the respondent was closed on account of exceptional/unavoidable circumstances beyond the control of the employer. Section 25-O of the Act applies to all closures of an industry governed by the provisions of Chapter V-B of the Act

whether voluntary or intended closure or closure due to the unavoidable circumstances beyond the control of the management. At this stage, it would be relevant to reproduce the relevant provisions of section 25(O), i.e sub section (1), (7) and of section 25-O of the Act which provide as under:

“25-O. Procedure for closing down an undertaking.—(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

(2)

(3)

(4)

(5)

(6)

- (7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.
- (8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive 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.”

The perusal of the aforesaid provisions show that an employer who intends to close down an undertaking of an industrial establishment is required to apply for prior permission at least 90 days before the date on which the intended closure is to become effective. The sudden closure necessitated by the circumstances beyond the control of the management do not come within the preview of section 25-O (1) of the Act as where a sudden closure becomes necessary the management will not be in a position to apply giving 90 days notice in advance as required. In the present case the respondent company did not intend to close down its establishment but was compelled to do so in view of the incident dated 30.6.2008. In such a case it was impossible for the respondent company to seek permission in advance as required under sub section (1) of section 25-O of the Act. In (2003) 12 SCC 29, Hindalco Industries Ltd., Vs. union of India and others, the Hon^{ble} Supreme Court has held that if the undertaking of an industrial establishment is to be closed down for the reasons beyond the control of employer, the provisions of sub section (7) of section 25-O of the Act would apply. The relevant paragraphs of the aforesaid judgment are re-produced as under:

“5. Section 25-O states that if an employer intends to close down an undertaking of an industrial establishment, he shall seek permission at least ninety days before the date of intended closure is to become effective. The reason for the intended closure also should be given in detail and the copy of such application shall be served on the representatives of the workmen in the prescribed manner. The contention of the appellant that Section 25-O would apply only to a voluntary and intended closure of an undertaking is without any force. If the undertaking of an industrial establishment is to be closed for reasons beyond the control of the employer, provisions have been made under sub Section 7 of Section 25-O of the I.D. Act.....

21. Admittedly, the appellant had an establishment where more than 100 workmen were employed on an average per working day. This fact is not disputed by the appellant. In that event, the provisions contained in Chapter V-B of the I.D. Act would apply to the appellant. Section 25-O being the provision contained in Chapter V-B of the I.D. Act, they are the relevant provisions regarding the procedure for closing down of an undertaking..... Under sub section (8) of section 25-O special provision has been made for the payment of compensation to workers when permission for closure is granted.

8. In view of the aforesaid circumstances, the plea of the appellant that Section 25-O of the I.D. Act applies to only planned and intended closure by the employer is devoid of merits and Section 25-O of the I.D. Act will govern the situation. We find no error of jurisdiction or illegality in the impugned judgment. The appeal is without any merits and is dismissed. If the workers are not so far paid their due compensation, the appellant shall pay the same within a period of two months.

16. From the perusal of the judgment extracted hereinabove it has become clear that section 25-O (7) of the Act would apply in the present case. In the evidence by way of affidavit Ex. RW-1/A, it has been averred that most of the workers who were employed through contractors as per the provisions of Contract Labour (Regulation and Abolition) Act 1970 have submitted their resignations to the contractors and had also taken their full & final dues from the contractor and left their job. It has also been stated in the affidavit that most of the workers who were on the rolls of the company have either been transferred to the other industrial establishments of respondent at Gagret, District Una and other associated industrial establishment at Hyderabad or have taken full and final dues and left the employment with the respondent. The aforesaid facts have not been denied by the petitioners and no evidence to the contrary has been led on behalf of petitioners. Therefore, the workers who have been employed through contractors, the workers who have been transferred to the other industrial establishments of the respondent management at Gagret, District Una and Hyderabad and the workers who have taken their full & final dues and left the employment with the respondent are not entitled to any compensation. However, the other workers who were on the rolls of the respondent at the time of closure of the factory namely M/s Tigaksha Metalic Pvt. Ltd., Shoghi are entitled to receive compensation in terms of section 25- O (8) of the Act 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. This issue is answered accordingly.

Issue no. 4

17. The onus to prove this issue was on the petitioners, however, no evidence has been led by the petitioners to prove that the respondent had not paid the earned wages to the workers who had worked during the month of June, 2008. It has been admitted by PW-1 in his cross-examination that the salary for the month of June, 2008 has been paid to all the workers.

Therefore, in the absence of any evidence on record and also in view of the admission of PW-1, it cannot be said that the earned wages to the workers who had worked during the month of June, 2008 have not been paid to them. Accordingly, this issue is decided in favour of the respondent and against the petitioners.

Issue no.5.

18. In view of my findings on issue no. 4, above, this issue becomes redundant.

Issue no.6.

19. In support of this issue, no evidence has been led by the respondent which could go to show as to why the petition is not maintainable. Moreover, the petitioner has filed the present claim pursuant to the reference sent by the appropriate government to this Court for adjudication. Accordingly, by holding it to be maintainable, this issue is decided in favour of the petitioners and against the respondent.

Relief

As a sequel to my above discussion and findings on issues no.1 to 6, the claim of the petitioners union is partly allowed as such all the workers who were on the rolls of the company at the time of closure of the factory namely M/s Tigaksha Metalic Pvt. Ltd., Shoghi are entitled to the compensation under section 25-O (8) of the Act. However, the workers who have been employed through contractors, the workers who have been transferred to the other industrial establishments of the respondent management at Gagret, District Una and Hyderabad and the workers who have taken their full & final dues and left the employment with the respondent are not entitled to any compensation. The reference is ordered to be partly answered in favour of the petitioners and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 2nd day of May, 2017.

(Praveen)

By order,
(**Sushil Kukreja**)
Presiding Judge,

Industrial Tribunal-cum- Labour Court, Shimla.

Workers Union Ref:- 60/2011 V/S Base Corporation Ltd. Solan

10.04.2017

Present: Shri Satish Bhatia, President of workers union with Sh. J.C. Bhardwaj, AR.

Sh. Vivek Kalia, Ld, Csl. With Sh. Rakesh Sharma, EA to C.M.D for respondent.

At this stage, it has been stated by Shri Satish Bhatia, President of the base corporation employees and workers union that the petitioner union had entered into an out of court settlement with the respondent management under section 18(1) of the Industrial Disputes Act, 1947, the

copy of which is Ex. C-1, vide which all the issues raised in reference no. 60 of 2011 have been settled. He further stated that in lieu of the aforesaid settlement, he has received cheques of all the workmen pertaining to the settlement and now the petitioner union has no dispute and claim with the respondent management pertaining to the reference no. 60 of 2011 in any manner whatsoever and the reference be decided in terms of settlement Ex. C-1 To this effect his statement recorded separately.

Vide separate statement, it has been stated by Shri J.C. Bhardwaj, AR for the petitioner union that the petitioner union had entered into an out of court settlement with respondent management under section 18(1) of the Industrial Disputes Act, 1947, the copy of which is Ex. C-1, vide which all the issues raised in reference no. 6 of 2011 have been settled. He further stated that in lieu of the aforesaid settlement, he has received cheques of all the workmen pertaining to the settlement and now the petitioner union has no dispute and claim with the respondent management pertaining to the reference no. 60 of 2011 in any manner whatsoever and the reference be decided in terms of settlement Ex. C-1.

Workers Union Ref:- 60/2011 V/S Base Corporation Ltd. Solan

10.04.2017

Present: Shri Satish Bhatia, President of workers union with Sh. J.C. Bhardwaj, AR.

Sh. Vivek Kalia, Ld, Csl. With Sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by shri Rakesh Sharma, EA to CMD, respondent company that the respondent had entered into a settlement with the petitioner union vide settlement Ex. C-1 and had settled all the issues with the petitioner union which have been raised vide reference no. 60 of 2011. He further stated that the respondent had handed over the cheques of all the workmen mentioned in the list Annexure A attached with the settlement Ex. C-1 pertaining to their settlement amount in lieu of full & final settlement of their claim and the reference be decided accordingly. To this effect, his statement also recorded separately.

Therefore, in view of the aforesaid statements and also in view of the settlement Ex. C-1 I am satisfied that a lawful compromise has been effected between the parties and also in terms of settlement Ex. C-1 which shall form a part of this order/award. Let a copy of this award/order be sent to appropriate government for publication in the official gazette. File, after, completion, be consigned to records.

By order,
(Sushil Kukreja)

*Presiding Judge,
H.P. Industrial Tribunal-cum- Labour Court Shimla.*

20.5.2017.

Present: None for the petitioner.

Shri J.R Sharma, Advocate vice csl. for respondent.

Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court. For today, the case has been listed for filing of claim. The record reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court on 16.11.2016 and thereafter the case was adjourned for 5.1.2017 for filing of claim but despite affording four opportunities in order to file the claim, the petitioner has failed to file any claim and even today, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

“Whether alleged termination of services of Shri Baldev S/o Shri Thakur Dass R/o Village Jhunjan (Singhpur), P.O Mashobra, Tehsil & District Shimla HP during July, 1994 by the Executive Engineer, City Electrical Division, HPSEB Ltd., Charlie Villa, Shimla 171001, who had worked for 115 days only during 1994 and has raised his industrial dispute after about 18 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 115 days only and delay of about 18 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?”

From the aforesaid reference is the clear that the petitioner has alleged his termination during the year, 1994 to be illegal and unjustified but despite affording more than four opportunities to file the claim, none appeared today on behalf of petitioner. The aforesaid reference also makes it clear that the petitioner had worked only for 115 days during the year, 1994 and raised the present dispute after more than 18 years. It appears that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during 1994. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

20.5.2017.

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Roop Ram Ref. 09/2011 V/S The XEN, IPH, Kasumpti, Shimla

The XEN, IPH, Kasumpti, Shimla-9

23.5.2017

Present:- Petitioner with Sh. Neel Kamal Sood, Advocate.
Ms. Reena Chauhan, Dy. DA for respondent.

At this state, it has been stated by the petitioner that he had earlier filed CWP No. 173/2016, in which case order was passed by the Hon^{ble} High Court vide annexure A/A dated

11.05.2016 Later on, the said CWP No. 173/2016 was withdrawn on 29.06.2016 vide annexure A/B. he further stated that in view of the orders passed by the Hon^{ble} High court the reference does not survive and the same be dismissed as withdrawn. To this effect his statement recorded separately.

Therefore, in view of the aforesaid statement of the petitioner, the present reference no 9/2017 is dismissed as withdrawn. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

By order,
(Sushil Kukreja)
Presiding Judge,

H.P. Industrial Tribunal-cum- Labour Court Shimla.

19.5.2017.

Present: None for the petitioner.

Shri Surinder Chauhan, Advocate for respondent.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner despite the fact that the claim was filed on behalf of the petitioner on 3.3.2017, however, today neither the petitioner nor his counsel has put in appearance. Therefore, in the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

“Whether alleged termination of services of Sh. Rakesh Inder Nath S/O Shri Dhani Ram R/O Ward No.5, Nalagarh, Distt. Solan, H.P. during the year, 1994 by the Commissioner, Municipal Corporation, Shimla, who had worked as beldar on daily wages with above employer and has raised his industrial dispute after about 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 11 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?”

From the aforesaid reference is the clear that the petitioner has alleged his termination during the year, 1994 to be illegal and unjustified but today the petitioner has failed to appear before this Court. The aforesaid reference also makes it clear that the petitioner had worked as daily wager with the respondent and raised the present dispute after about 11 years. At this stage no concrete material has been placed on record by the petitioner so as to arrive at a conclusion that the alleged termination of the services of the petitioner was illegal and unjustified. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during 1994.

Hence, the claim filed by the petitioner is dismissed and the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the

appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

19.5.2017

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

3.5.2017.

Present: None for the petitioner.

Ms. KiranNegi, Advocate vice shri Rahul Mahajan, Advocate for respondent.

It is 10:40 AM. Case called twice but none appeared on behalf of petitioner. Be awaited.

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called again.

Present: None for the petitioner.

Ms. KiranNegi, Advocate vice shri Rahul Mahajan, Advocate for respondent.

It is 12: 35 PM. Case called again but none appeared on behalf of petitioner. Be called after lunch.

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present: None for the petitioner.

Ms. KiranNegi, Advocate vice shri Rahul Mahajan, Advocate for respondent.

It is 3:45 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate has put in appearance before this Court. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:
 “Whether termination of services of ShriJasi Chand S/o Shri Pat ram R/o VPO Madhana (Morni Hill) Tehsil & District Haryana w.e.f. 28.7.2015 by the Employer/ Factory Manager of M/s Venus Remedies Ltd., Hill Top Industrial Estate, EPIP Phase-1 BhatoliKalanBaddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above workers is entitled to from the above employer?”

From the aforesaid reference it is clear that the petitioner has challenged his termination w.e.f. 28.7.2015 to be illegal and unjustified but the petitioner has failed to appear before this Court and to lead any evidence which shows that he is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

3.5.2017.

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

31.5.2017.

Present: None for the petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for the service of the petitioner. The record reveals that the notices issued for the service of the petitioner on the given address of reference itself, have not been received back either served or un-served. The record further reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court on 22.2.2017 on which date none appeared for petitioner and Ms. Reena Chauhan, Dy. DA appeared for respondent and thereafter the case is being listed for the service of the petitioner but despite issuance of notices, the same have not been received back either served or un-served. Moreover, a copy of reference was also sent by the appropriate government to the petitioner which means that he is having the knowledge about the pendency of the reference before this Court. Hence, to issue notice again for the service of the petitioner and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

“Whether alleged termination of services of Sh. Uttam Chand S/O Sh. Jiri Ram R/O Village-Batooni, P.O. Nogli, Tehsil Rampur, Distt. Shimla August, 1995 by the Executive Engineer, HPPWD (B & R) Division Rampur, Distt. Shimla, H.P., who had worked for 60 days only during 1995 and raised his industrial dispute after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and

justified? If not, keeping in view the working period of 60 days only during 1995 and delay of more than 16 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?"

From the aforesaid reference is the clear that the petitioner has alleged his termination during August, 1995 to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioner. The aforesaid reference also makes it clear that the petitioner had worked only for 60 days during the year 1995 and raised the present dispute after about 16 years which seems that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during August, 1995. Hence, the reference is answered against the petitioner and the award is passed accordingly. However, liberty is granted to the petitioner to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
31.5.2017.

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

26.5.2017.

Present: None for the petitioner.

Shri Rajeev Sharma Advocate for respondent.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim by the petitioner but today neither the petitioner nor any authorized person has put in appearance on his behalf despite the fact that on the 12.12.2016, 15.3.2017 and 21.4.2017, the petitioner appeared himself before this Court and thereafter, he failed to appear before this Court and to file statement of claim. Hence, to issue notice again for the service of the petitioner and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:
"Whether termination of services of Shri Vineet Kumar Sahore S/o late Shri Mashadev Sahore R/o VPO Raipur Sahoran, Tehsil & District Una HP w.e.f. 23.9.2015 by the employer/management of M/s Ashoka Spanners Pvt. Ltd., Baddi, Tehsil Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

From the aforesaid reference is the clear that the petitioner has alleged his termination w.e.f. 23.9.2015 to be illegal and unjustified but despite having afforded repeated opportunities in order to file the statement of claim, none appeared on behalf of petitioner which seems that the petitioner is not interested to pursue the present claim

arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent w.e.f. 23.9.2015.

Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
26.5.2017.

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla Camp at Nalagarh.

24.5.2017.

Present: None for the petitioner.
Ms. Sneh Negi, Advocate vice csl. for respondent.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner despite the fact that for today the case was listed for filing of claim. The record reveals that the petitioner had put in appearance before this Court on 15.11.2016 and thereafter the case is being listed for filing of claim but despite availing repeated opportunities, the claim has not been filed. Today, neither the petitioner nor his counsel appeared before this Court when the case was listed for filing of the claim by the petitioner. Therefore, in the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

“Whether alleged termination of services of Sh. Preet Pal S/o Shri Dalip Singh, Village Seeno, P.O Baldeyan, Tehsil & District Shimla HP during April, 1997 by the i) The Registrar Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan HP ii) The Executive Engineer (PWD Wing) Dr. Y. S Parmar University of Horticulture and Forestry, Nauni District Solan, HP who had worked as beldar on daily wages only for 73 days in the year, 1997 and has raised his industrial disputes after about 17 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 of about 17 years in raising the industrial disputes what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

From the aforesaid reference it is clear that the petitioner has alleged his termination during April, 1997 to be illegal and unjustified but today neither the petitioner nor his counsel appeared before this Court and also failed to file any claim. The aforesaid reference also makes it clear that the petitioner had worked as daily wage with the respondents only for 73 days in the year 1997 and raised the present dispute after about 17 years. At this stage no concrete material has been placed on record by the petitioner so as to arrive at a conclusion that the

alleged termination of the services of the petitioner was illegal and unjustified. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during April, 1997. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

24.5.2017.

By order,
(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

Ref No. 12 of 2007.

Instituted on. 5.3.2007.

Decided on 30.5.2017

The General Secretary, Continental Foundation Joint Venture Workers Union, Village
& P.O Sholding, District Kinnaur, H.P.

.....Petitioner

Vs.

The Project Manager, Continental Foundation Joint Venture Village & P.O Sholding,
District Kinnaur, H.P.

.....Respondent

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

For petitioner : Shri Rahul Mahajan, Advocate.

For respondent : Shri D.P Sharda, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the demand raised by the General Secretary, Continental Foundation Joint Venture Workers Union, Village & P.O Sholding, District Kinnaur, H.P. through their demand notice dated 26.12.2003 (copy enclosed) regarding payment of over-time wages of workmen from the management of Continental Foundation Joint Venture Village & P.O Sholding, District Kinnaur, H.P. is proper and justified/ If yes, what relief of

service benefits the workmen of the Continental Foundation Joint Venture are entitled to as per demand notice? If not, what its legal effect?"

2. The present claim petition has been filed by the General Secretary of Workers Union, Continental Foundation Joint Venture, on behalf of 1282 workers, who had been employed by the respondent in tribal area in different trades (hereinafter referred as Petitioner union). Briefly, the case of the Petitioner union is that they are entitled for 25% extra wages over and above the minimum wages prescribed for non-tribal areas as per the notification issued by the Government of Himachal Pradesh, Department of Labour & Employment from time to time in respect of tribal area. The workers had worked over time and they had not been given over time as per wages fixed for tribal area by the Government. Against this back-drop a prayer has been made that all the demands as raised vide demand charter dated 26.12.2003 be allowed.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the claim of the petitioner is stale and belated, not maintainable and that after the work on the Nathpa Jhakri Project was started by the respondent, the labour agreement-cum-settlement was arrived at between the petitioner union and respondent on 1.3.1995 and the payments were made to the workers strictly as per this settlement which included the tribal area allowance of 50%. The provisions of settlement dated 1.3.1995, continued up to 27.5.2001, when a fresh settlement was arrived at between the parties and payments were made including tribal area allowance @ 25%. The next settlement was entered between the parties on 27.1.2004, and the payments were made, including 50% tribal allowance, in addition to other allowances. On merits, it has been asserted that the work of the project had been completed and all the workmen have left the employment after taking much more than their statutory dues. It is further asserted that the respondent had already made the payments, as per settlements, including tribal allowance @ 25% and @ 50%. Consequently, respondent prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner has reaffirmed the allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed by this Court on 23.10.2009.

1. Whether the demand raised by the General Secretary of the petitioner union through their demand notice dated 26.12.2003, regarding payment of over-time wages of workmen from the respondent management is proper and justified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits, the petitioners are entitled to?

OPR.....

3. Whether the claim of the petitioners has become stale and belated as alleged?

OPR.....

4. Whether this Court has no jurisdiction to try this claim?

OPR.....

5. Relief.

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

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

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 Yes.

Issue no.4. No.

Relief. Reference answered in favour of the respondent and against the petitioner union per operative part of award.

Reasons for findings

Issue no.1

8. Ld. Counsel for the petitioner has argued with vehemence that the respondent is bound to pay the overtime wages to the workers of petitioner union as per notifications issued from time to time by the Government of Himachal Pradesh with respect to payment of over-time wages to the workers working in tribal areas. On the other hand Ld. Counsel for respondent has urged that all the statutory payments including the payment of overtime wages have been made to the workmen in accordance with law and as per the settlement between the petitioner union and the respondent.

9. Shri Rajesh Chauhan, Labour Inspector has appeared into the witness box as PW-1 who has produced the summoned record. Ex. PW-1/A to Ex. PW-1/H which are the notifications regarding minimum wages w.e.f. 1.10.1994 to 1.1.2007.

10. PW-2, Shri Ravinder Kumar, while appearing into the witness box stated that the respondent company used to execute the work of excavation of tunnels and building of dams. The above work was awarded to respondent company by SJVNL (now known as NJPC) in district Kinnaur, tribal area. The copy of resolution is Ex. PW-2/A. The copy of demand notice is Ex. PW-2/B. The names of the members of union are mentioned in Ex. PW-2/C. They (workers) were being paid wages as per notifications but not the over-time which was being paid to the workers of Himalyan Construction Company and Satyam Shankar Narayan joint Venture. They were being paid 25% less over-time than as per the entitlement. By not paying over-time @ 25%, every worker was getting less wages in the year 1994 and similarly in the subsequent years, till 2005. In the cross-examination, he has admitted that the demand charter was submitted by the union, for the first time, in the year, 2003. He also denied that the names of the workers, as find mentioned in Ex. PW-2/C, are not the members of their union. He admitted that the work of the project stands competed in the year, 2006. He further admitted that settlements Ex. RP-1, Ex. RP-2 and Ex. RP-3 were entered on 1.3.1995, 27.5.2001 and 27.1.2004 respectively. He denied that tribal area allowance had been paid as per the statutory notifications.

11. Shri Ramchander, PW-3 has produced the summoned record, Ex. RA and stated that in tribal area, as per government notification, wages were paid 25% over and above minimum wages and over time also used to be paid on the basis of minimum wages including 25% of

tribal allowance. He further stated that 20% tunnel allowance is also included in over time. In the cross-examination, he admitted that he had no knowledge as to on what basis over time, tribal area allowance and tunnel allowance were calculated by the Clerk.

12. PW-4 Shri Prakash Chand Mankotia, Administrative Assistant has stated that he had not brought the summoned record for the reason that the same stood destroyed in the year 2005-06 as in the year 2003-04, the Nathpa Jhakri Project stood commissioned and the site office got closed. The witness was not cross-examined on behalf of respondent despite affording opportunity.

13. RW-1, Shri Sunder Lal deposed that two works had been awarded to the respondent and after the said awards, the work had started in the year 1993. Three agreements Ex. RP-1 to Ex. RP-3, had been executed between the workers union and Continental Joint Venture. The award/work 1.0 was completed in the year, 2004 and the award 2.1 was completed in the year, 2003 and after the completion of the works, the respondent had to maintain the same for one year including the execution of minor remaining works, as per agreement. All the payments had been made to the workers and nothing was due to them and the record pertaining to labour payments was also destroyed. In cross-examination, he admitted that the claim in dispute pertains to the period when there was continental joint venture. He denied that the over time had not been paid to the workers but explained that the dues were paid to the workers as per Ex. PW-2/B.

14. The learned counsel for the petitioner, has tendered in evidence, the photocopies of letters dated 18.11.2013 and 27.6.2008, Ex. PX and Ex. PY respectively.

15. I have heard the learned counsel for the parties and also gone through the record of the case carefully including the written arguments submitted by the learned counsel for the respondent. After the closer scrutiny of the record of the case, it has become clear that the respondent i.e Continental Foundation Joint Venture, was awarded two contracts by the then Nathpa Jhakri Power Corporation (NJPC), presently known as Satluj Jal Vidyut, Nigam Ltd. (SJVN Ltd.). These awards were numbered as 1.0 and 2.1. The work of contract no 2.1 was completed in the year, 2003 and the work of other contract i.e 1.0 was completed in the year, 2004. It has been admitted in cross-examination by PW-2, the General Secretary of the petitioner union that the work of the project stood completed in the year, 2006. It is also not in dispute that three settlements had been arrived at between the workers of the petitioner union and the respondent. The first settlement was executed between the parties on 1.3.1995, the copy of which has been placed on record as Ex. RP-1. As per clause 5.02 of aforesaid settlement, the workmen were entitled to Tribal Allowance @ 50% besides various other allowances/benefits. The provisions of this settlement continued upto 27.5.2001 when second settlement was arrived at between the parties, the copy of which has been tendered in evidence as Ex. RP-2. As per clause 5.05 of the aforesaid settlement, the workmen were entitled to Tribal Allowance @ 25% besides number of other allowances. The next settlement was entered between the parties on 27.1.2004, the copy of which has been tendered in evidence as Ex. RP-3 and as per clause 5.01, of the settlement, the workers were entitled to the Tribal Area allowance @ 50% in addition to other allowances. It is not the case of the petitioner union that the payments were not made to the workmen as per the settlements Ex. RP-1 to Ex. RP-3. It is also not in dispute that the present demand notice was raised by the petitioner union in the year 2003 and the reference has been sent by the appropriate government in the year, 2007. The case of the petitioner union as raised in the demand notice Ex. PW-2/B is that the wages so prescribed by the Government of HP for Tribal area has been fixed 25% over and above the normal wages as notified under the Minimum Wages Act as such the overtime should have been calculated on the entire wages but the wages for the extra work done by the workmen were not calculated on the entire wages and the workmen were being paid overtime wages less than that to which they were entitled as such the overtime wages

be calculated on the entire wages including that of 25% on the normal rate of minimum wages for the period workmen have served and payment of arrears be made accordingly to all the workers. However, to prove its case, no satisfactory evidence has been led by the petitioner union. There is no evidence on record to show that how much less wages have been paid to the workers. It is not disputed by the petitioner union that the works awarded to the respondent were partly in the Tribal area of the Himachal Pradesh and partly out-side the tribal area. PW-2, General Secretary of the union admitted in cross-examination that the entire works of NJPC did not fall in the tribal area. Though the petitioner union has tendered in evidence the list of workers Ex. PW-2/C wherein the names of 1282 workers have been shown to be the members of petitioner union who allegedly had worked on Project. However, no evidence has been led by the petitioner union as to how many workers had worked in the Tribal area and how many of them had worked outside the Tribal area. Similarly, there is no evidence to suggest that how many workers had worked over time for how many hours per day. In the demand notice Ex. PW-2/B a prayer has been made that the payment of arrears be made to all the workmen including retrenched workmen. However, no evidence has been led by the petitioner union as to how many workers have been retrenched. Though the petitioner union had tried to prove its case by calling for the record of the respondent in evidence but the statement of PW-4 clearly shows that the record of the respondent Joint Venture stood destroyed. This witness was summoned and examined on 21.10.2013 i.e after a gap of ten years from the date of raising of the demand notice by the petitioner union. RW-1 also categorically deposed that the respondent had made entire payments to the workmen and nothing was due to them and the record pertaining to the payment of labour was also destroyed. In cross-examination, he specifically stated that the respondent had paid all the dues to the workmen as per the demand notice Ex. PW-2/B. The burden was upon the petitioner union to prove by leading cogent and satisfactory evidence on record that the workers had not been paid the overtime wages as per the demand raised vide demand notice dated 26.12.2003. It is a settled law that the obligation to lead evidence to establish an allegation made by a party is upon the party making the allegation. The test would be as to who would fail if no evidence is led. The party making the allegations and seeking the redressal must seek an opportunity to lead evidence. In the present case, the petitioner union has pleaded that the workers had not been paid the overtime wages as per the demand raised vide demand notice dated 26.12.2003. However, to substantiate these allegations, except for bald statement of PW-2, no other satisfactory evidence has been led by the petitioner union. No documentary evidence has been produced on record by the petitioner union as to how much wages had been actually paid to the workers and how much less wages have been paid to them. Therefore, in the absence of any material on record and in the absence of any cogent evidence adduced by the petitioner union, it cannot be said that the demand raised by the petitioner union through their demand notice dated 26.12.2003 regarding payment of overtime wages is proper and justified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no.2

17. Since, the petitioner union has failed to prove issue no.1, this issue becomes redundant.

Issue no.3.

18. The learned counsel for the respondent contended that the reference is highly belated and the workers of petitioner union have in fact raised the demand notice simultaneously when the work of 2.1 was completed and that the work of 1.0 was almost nearing completion. He further contended that had there been any rightful claim of the workers, the same could have been submitted by the workers of petitioner union well in time which clearly proves beyond doubt that the claim of the petitioner union is nothing but an afterthought.

19. On the question of delay, it has been held by the Hon'ble Supreme Court in (2000) 2 SCC 455, NEDUNGADI BANK LTD. VS. K.P. MADHAVANKUTTY AND ORS, that though no limitation period is prescribed in the Industrial Disputes Act for raising the dispute but it does not mean that the dispute can be raised at any time and a dispute which is stale cannot be the subject matter of the reference under section 10 of the Act. The relevant portion of the aforesaid judgment is reproduced as under:

“6. Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was *ex facie* bad and incompetent. Similarly, in (2003) 4 SCC 27, S.M. Nilajkar & Ors VS. Telecom. District Manager, Karnataka, it has been held by the Hon'ble Supreme Court that the disputes should be referred as soon as possible after they have arisen and the delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available.

The relevant portion of the aforesaid judgment is reproduced as under:

“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. It is true, as held in *M/s Shalimar Works Limited Vs. Their Workmen* (supra) that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in *M/s Shalimar Works Limited Vs. Their Workmen* (supra). In *Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Ors.* (supra), a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In *Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors.* (supra), 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. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute

before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees Under P & T Department Vs. Union of India (supra) the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay.”

20. The perusal of the aforesaid decisions given by the Hon^{ble} supreme Court, makes it abundantly clear that though the statute does not prescribe any time limit for raising the dispute, it does not mean that the dispute can be raised at any time without regard to the delay and reasons thereof and further that the delay in raising the industrial dispute would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. In the present case also from the evidence on record, it has become clear that the present demand notice was raised by the petitioner union on 26.12.2003 when the work of contract no. 2.1 was completed and the work of contract no. 1.0 was almost nearing completion and the reference has been sent by the appropriate government in the year, 2007, after the completion of project. It has also come during the evidence on record that after the completion of the work, the office of Joint Venture stood closed, the officials of the Canadian company left the place of work and the record pertaining to the payments of the labour was destroyed. No explanation has been offered as to why the dispute was not raised by the petitioner union well in time. The petitioner union has failed to explain as to why it did not approach the labour authorities/Conciliation Officer and the appropriate government immediately when the cause of action had arisen in their favour and why they have raised the industrial dispute after such a long period, which shows that their claim is an afterthought. Therefore, in such a situation, since due to the delay in raising the industrial dispute, the material evidence has been destroyed and is not available as such the delay in raising the industrial dispute would be fatal in the facts and circumstances of the present case and the same cannot be entertained being stale and belated. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no.4

21. In support of this issue, no evidence has been led by the respondent which could go to show as to how this Court has no jurisdiction. Therefore, in the absence of any evidence on record and in view of the facts and circumstances of the present case, it cannot be said that this Court has no jurisdiction to try the claim as such this issue is decided in favour of the petitioner union and against the respondent.

Relief

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner union fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of May, 2017.
(Praveen)

By order,
(**Sushil Kukreja**)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

[Authoritative English text of this Department Notification No.EXN-F(10)- 18/2017 dated _____ as required under clause (3) of article 348 of the Constitution of India].

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Shimla, the 13th July, 2017

No. EXN-F(10)-18/2017.—In pursuance to the sub-section (4) of section 11 of the Himachal Pradesh Goods and Services Tax Act, 2017 (10 of 2017), the Governor of Himachal Pradesh is pleased to notify that the notification No. 6/2017-Central Tax, dated 19th June, 2017 notified by the Government of India under the Central Goods and Services Tax Act, 2017 shall also apply mutatis-mutandis to the Himachal Pradesh Goods and Services Tax Act, 2017.

2. This notification shall come into force with retrospective effect from the 24th day of June, 2017.

By order,
ONKAR SHARMA
Principal Secretary (E&T).

[Authoritative English text of this Department Notification No.EXN-F(10)- 18/2017 dated _____ as required under clause (3) of article 348 of the Constitution of India].

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Shimla, the 13th July, 2017

No.EXN-F(10)-18/2017.—In exercise of the powers conferred under Section 9 of the Himachal Pradesh Goods and Services Tax Act, 2017 (10 of 2017), the Governor of Himachal Pradesh is pleased to make the following amendments in the NOTIFICATION NO. 1/2017-STATE TAX (RATE) published in the Gazette of Himachal Pradesh, Ordinary, vide No. EXN-F(10)-14/2017-Loose dated 30th June, 2017 namely:—

2. In the said notification:-

(i) in Schedule I – 2.5%, at page No. 3182, after serial number 182 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:—

(1)	(2)	(3)
“182A	3102	Mineral or chemical fertilisers, nitrogenous, other than those which are clearly not to be used as fertilizers
182B	3103	Mineral or chemical fertilisers, phosphatic, other than those which are clearly not to be used as fertilizers
182C	3104	Mineral or chemical fertilisers, potassic, other than those which are clearly not to be used as fertilizers

182D	3105	Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg; other than those which are clearly not to be used as fertilizers”;
------	------	---

(ii) in Schedule II – 6%, at page No. 3195, serial numbers 66, 67, 68 and 69 and the entries relating thereto shall be omitted.

3. This notification shall come into force with retrospective effect from the 1st day of July, 2017.

By order,
Onkar Sharma
Principal Secretary (E&T).

[Authoritative English text of this Department Notification No.EXN-F(10)-18/2017dated _____ as required under clause (3) of article 348 of the Constitution of India].

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Shimla, the 13th July, 2017

No.EXN-F(10)-18/2017.—In exercise of the powers conferred under sub-section (1) of Section 9, subsection 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Himachal Pradesh Goods and Services Tax Act, 2017 (10 of 2017), the Governor of Himachal Pradesh is pleased to make the following amendments in the NOTIFICATION NO. 11/2017-STATE TAX (RATE) published in the Gazette of Himachal Pradesh, Ordinary, vide No. EXN-F(10)-14/2017-Loose dated 30th June, 2017 namely:—

2. In the said notification, at page No. 3268, after Para No. 4, the following Annexure shall be inserted, namely:—

Annexure: Scheme of Classification of Services			
S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings

5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like
7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings
9		995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10		995416	Construction services of other buildings nowhere else classified
11		995419	Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the buildings covered above
12	Group 99542		General construction services of civil engineering works
13		995421	General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels
14		995422	General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks
15		995423	General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works
16		995424	General construction services of local water and sewage pipelines, electricity and communication cables and related works

17		995425	General construction services of mines and industrial plants
18		995426	General Construction services of Power Plants and its related infrastructure
19		995427	General construction services of outdoor sport and recreation facilities
20		995428	General construction services of other civil engineering works nowhere else classified
21		995429	Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the constructions covered above
22	Group 99543		Site preparation services
23		995431	Demolition services
24		995432	Site formation and clearance services including preparation services to make sites ready for subsequent construction work, test drilling and boring and core extraction, digging of trenches
25		995433	Excavating and earthmoving services
26		995434	Water well drilling services and septic system installation services
27		995435	Other site preparation services nowhere else classified
28		995439	Services involving repair, alterations, additions, replacements, maintenance of the constructions covered above
29	Group 99544		Assembly and erection of prefabricated constructions
30		995441	Installation, assembly and erection services of prefabricated buildings
31		995442	Installation, assembly and erection services of other prefabricated structures and constructions
32		995443	Installation services of all types of street furniture (such as bus shelters, benches, telephone booths, public toilets, and the like)
33		995444	Other assembly and erection services nowhere else classified
34		995449	Services involving repair, alterations, additions, replacements, maintenance of the constructions covered above

35	Group 99545		Special trade construction services
36		995451	Pile driving and foundation services
37		995452	Building framing and roof framing services
38		995453	Roofing and waterproofing services
39		995454	Concrete services
40		995455	Structural steel erection services
41		995456	Masonry services
42		995457	Scaffolding services
43		995458	Other special trade construction services nowhere else classified
44		995459	Services involving repair, alterations, additions, replacements, maintenance of the constructions covered above
45	Group 99546		Installation services
46		995461	Electrical installation services including Electrical wiring and fitting services, fire alarm installation services, burglar alarm system installation services
47		995462	Water plumbing and drain laying services
48		995463	Heating, ventilation and air conditioning equipment installation services
49		995464	Gas fitting installation services
50		995465	Insulation services
51		995466	Lift and escalator installation services
52		995468	Other installation services nowhere else classified
53		995469	Services involving repair, alterations, additions, replacements, maintenance of the installations covered above
54	Group 99547		Building completion and finishing services
55		995471	Glazing services
56		995472	Plastering services
57		995473	Painting services
58		995474	Floor and wall tiling services
59		995475	Other floor laying, wall covering and wall papering services
60		995476	Joinery and carpentry services

61		995477	Fencing and railing services
62		995478	Other building completion and finishing services nowhere else classified
63		995479	Services involving repair, alterations, additions, replacements, maintenance of the completion/finishing works covered above
64	Section 6		Distributive Trade Services ; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services
65	Heading 9961		Services in wholesale trade
66	Group 99611		
67		996111	Services provided for a fee or commission or on contract basis on wholesale trade
68	Heading 9962		Services in retail trade
69	Group 99621		
70		996211	Services provided for a fee or commission or on contract basis on retail trade
71	Heading 9963		Accommodation, food and beverage services
72	Group 99631		Accommodation services
73		996311	Room or unit accommodation services provided by Hotels, Inn, Guest House, Club and the like
74		996312	Camp site services
75		996313	Recreational and vacation camp services
76	Group 99632		Other accommodation services
77		996321	Room or unit accommodation services for students in student residences
78		996322	Room or unit accommodation services provided by Hostels, Camps, Paying Guest and the like
79		996329	Other room or unit accommodation services nowhere else classified
80	Group 99633		Food, edible preparations, alcoholic and non-alcoholic beverages serving services
81		996331	Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food
82		996332	Services provided by Hotels, Inn, Guest House, Club and the like including room services, takeaway services and door delivery of food

83		996333	Services provided in canteen and other similar establishments
84		996334	Catering Services in exhibition halls, events, marriage halls and other outdoor/indoor functions
85		996335	Catering services in trains, flights and the like
86		996336	Preparation or supply services of food, edible preparations, alcoholic and non-alcoholic beverages to airlines and other transportation operators
87		996337	Other contract food services
88		996339	Other food, edible preparations, alcoholic and non-alcoholic beverages serving services nowhere else classified
89	Heading 9964		Passenger transport services
90	Group 99641		Local transport and sightseeing transportation services of passengers
91		996411	Local land transport services of passengers by railways, metro, monorail, bus, tramway, autos, three wheelers, scooters and other motor vehicles
92		996412	Taxi services including radio taxi and other similar services
93		996413	Non-scheduled local bus and coach charter services
94		996414	Other land transportation services of passengers
95		996415	Local water transport services of passengers by ferries, cruises and the like
96		996416	Sightseeing transportation services by rail, land, water and air
97		996419	Other local transportation services of passengers nowhere else classified
98	Group 99642		Long-distance transport services of passengers
99		996421	Long-distance transport services of passengers through rail network by railways, metro and the like
100		996422	Long-distance transport services of passengers through road by bus, car, non-scheduled long distance bus and coach services, stage carriage and the like

101		996423	Taxi services including radio taxi and other similar services
102		996424	Coastal and transoceanic (overseas) water transport services of passengers by Ferries, Cruise Ships and the like
103		996425	Domestic/ international scheduled air transport services of passengers
104		996426	Domestic/ international non-scheduled air transport services of passengers
105		996427	Space transport services of passengers
106		996429	Other long-distance transportation services of passengers nowhere else classified
107	Heading 9965		Goods Transport Services
108	Group 99651		Land transport services of Goods
109		996511	Road transport services of Goods including letters, parcels, live animals, household and office furniture, containers and the like by refrigerator vehicles, trucks, trailers, man or animal drawn vehicles or any other vehicles
110		996512	Railway transport services of Goods including letters, parcels, live animals, household and office furniture, intermodal containers, bulk cargo and the like
111		996513	Transport services of petroleum and natural gas, water, sewerage and other goods via pipeline
112		996519	Other land transport services of goods nowhere else classified
113	Group 99652		Water transport services of goods
114		996521	Coastal and transoceanic (overseas) water transport services of goods by refrigerator vessels, tankers, bulk cargo vessels, container ships and the like
115		996522	Inland water transport services of goods by refrigerator vessels, tankers and other vessels
116	Group 99653		Air and space transport services of goods
117		996531	Air transport services of letters and parcels and other goods

118		996532	Space transport services of freight
119	Heading 9966		Rental services of transport vehicles with or without operators
120	Group 99660		Rental services of transport vehicles with or without operators
121		996601	Rental services of road vehicles including buses, coaches, cars, trucks and other motor vehicles, with or without operator
122		996602	Rental services of water vessels including passenger vessels, freight vessels and the like with or without operator
123		996603	Rental services of aircraft including passenger aircrafts, freight aircrafts and the like with or without operator
124		996609	Rental services of other transport vehicles nowhere else classified with or without operator
125	Heading 9967		Supporting services in transport
126	Group 99671		Cargo handling services
127		996711	Container handling services
128		996712	Customs house agent services
129		996713	Clearing and forwarding services
130		996719	Other cargo and baggage handling services
131	Group 99672		Storage and warehousing services
132		996721	Refrigerated storage services
133		996722	Bulk liquid or gas storage services
134		996729	Other storage and warehousing services
135	Group 99673		Supporting services for railway transport
136		996731	Railway pushing or towing services
137		996739	Other supporting services for railway transport nowhere else classified
138	Group 99674		Supporting services for road transport
139		996741	Bus station services
140		996742	Operation services of national highways, state highways, expressways, roads and streets; bridges and tunnel operation services
141		996743	Parking lot services

142		996744	Towing services for commercial and private vehicles
143		996749	Other supporting services for road transport nowhere else classified
144	Group 99675		Supporting services for water transport (coastal, transoceanic and inland waterways)
145		996751	Port and waterway operation services (excluding cargo handling) such as operation services of ports, docks, light houses, light ships and the like
146		996752	Pilotage and berthing services
147		996753	Vessel salvage and refloating services
148		996759	Other supporting services for water transport nowhere else classified
149	Group 99676		Supporting services for air or space transport
150		996761	Airport operation services (excluding cargo handling)
151		996762	Air traffic control services
152		996763	Other supporting services for air transport
153		996764	Supporting services for space transport
154	Group 99679		Other supporting transport services
155		996791	Goods transport agency services for road transport
156		996792	Goods transport agency services for other modes of transport
157		996793	Other goods transport services
158		996799	Other supporting transport services nowhere else classified
159	Heading 9968		Postal and courier services
160	Group 99681		Postal and courier services
161		996811	Postal services including post office counter services, mail box rental services
162		996812	Courier services
163		996813	Local delivery services
164		996819	Other Delivery Services nowhere else classified
165	Heading 9969		Electricity, gas, water and other distribution services

166	Group 99691		Electricity and gas distribution services
167		996911	Electricity transmission services
168		996912	Electricity distribution services
169		996913	Gas distribution services
170	Group 99692		Water distribution and other services
171		996921	Water distribution services
172		996922	Services involving distribution of steam, hot water and air conditioning supply and the like
173		996929	Other similar services
174	Section 7		Financial and related services; real estate services; and rental and leasing services
175	Heading 9971		Financial and related services
176	Group 99711		Financial services (except investment banking, insurance services and pension services)
177		997111	Central banking services
178		997112	Deposit services
179		997113	Credit-granting services including stand-by commitment, guarantees and securities
180		997114	Financial leasing services
181		997119	Other financial services (except investment banking, insurance services and pension services)
182	Group 99712		Investment banking services
183		997120	Investment banking services
184	Group 99713		Insurance and pension services (excluding reinsurance services)
185		997131	pension services
186		997132	Life insurance services (excluding reinsurance services)
187		997133	Accident and health insurance services
188		997134	Motor vehicle insurance services
189		997135	Marine, aviation, and other transport insurance services
190		997136	Freight insurance services and travel insurance services

191		997137	Other property insurance services
192		997139	Other non-life insurance services (excluding reinsurance services)
193	Group 99714		Reinsurance services
194		997141	Life reinsurance services
195		997142	Accident and health reinsurance services
196		997143	Motor vehicle reinsurance services
197		997144	Marine, aviation and other transport reinsurance services
198		997145	Freight reinsurance services
199		997146	Other property reinsurance services
200		997149	Other non-life reinsurance services
201	Group 99715		Services auxiliary to financial services (other than to insurance and pensions)
202		997151	Services related to investment banking such as mergers and acquisition services, corporate finance and venture capital services
203		997152	Brokerage and related securities and commodities services including commodity exchange services
204		997153	Portfolio management services except pension funds
205		997154	Trust and custody services
206		997155	Services related to the administration of financial markets
207		997156	Financial consultancy services
208		997157	Foreign exchange services
209		997158	Financial transactions processing and clearing house services
210		997159	Other services auxiliary to financial services
211	Group 99716		Services auxiliary to insurance and pensions
212		997161	Services auxiliary to insurance and pensions
213		997162	Insurance claims adjustment services
214		997163	Actuarial services
215		997164	Pension fund management services
216		997169	Other services auxiliary to insurance and pensions
217	Group 99717		Services of holding financial assets
218		997171	Services of holding equity of subsidiary companies

219		997172	Services of holding securities and other assets of trusts and funds and similar financial entities
220	Heading 9972		Real estate services
221	Group 99721		Real estate services involving owned or leased property
222		997211	Rental or leasing services involving own or leased residential property
223		997212	Rental or leasing services involving own or leased non-residential property
224		997213	Trade services of buildings
225		997214	Trade services of time-share properties
226		997215	Trade services of vacant and subdivided land
227	Group 99722		Real estate services on a fee or commission basis or on contract basis
228		997221	Property management services on a fee or commission basis or on contract basis
229		997222	Building sales on a fee or commission basis or on contract basis
230		997223	Land sales on a fee or commission basis or on contract basis
231		997224	Real estate appraisal services on a fee or commission basis or on contract basis
232	Heading 9973		Leasing or rental services with or without operator
233	Group 99731		Leasing or rental services concerning machinery and
234		997311	Leasing or rental services concerning transport equipments including containers, with or without operator
235		997312	Leasing or rental services concerning agricultural machinery and equipment with or without operator
236		997313	Leasing or rental services concerning construction machinery and equipment with or without operator
237		997314	Leasing or rental services concerning office machinery and equipment (except computers) with or without operator
238		997315	Leasing or rental services concerning computers with or without operators

239		997316	Leasing or rental services concerning telecommunications equipment with or without operator
240		997319	Leasing or rental services concerning other machinery and equipments with or without operator
241	Group 99732		Leasing or rental services concerning other goods
242		997321	Leasing or rental services concerning televisions, radios, video cassette recorders, projectors, audio systems and related equipment and accessories (home entertainment equipment)
243		997322	Leasing or rental services concerning video tapes and disks (home entertainment equipment)
244		997323	Leasing or rental services concerning furniture and other household appliances
245		997324	Leasing or rental services concerning pleasure and leisure equipment
246		997325	Leasing or rental services concerning household linen
247		997326	Leasing or rental services concerning textiles, clothing and footwear
248		997327	Leasing or rental services concerning do-it-yourself machinery and equipment
249		997329	Leasing or rental services concerning other goods
250	Group 99733		Licensing services for the right to use intellectual property and similar products
251		997331	Licensing services for the right to use computer software and databases
252		997332	Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme and the like
253		997333	Licensing services for the right to reproduce original art works
254		997334	Licensing services for the right to reprint and copy manuscripts, books, journals and periodicals
255		997335	Licensing services for the right to use research and development products
256		997336	Licensing services for the right to use trademarks and franchises

257		997337	Licensing services for the right to use minerals including its exploration and evaluation
258		997338	Licensing services for right to use other natural resources including telecommunication spectrum
259		997339	Licensing services for the right to use other intellectual property products and other resources nowhere else classified
260	Section 8		Business and Production Services
261	Heading 9981		Research and development services
262	Group 99811		Research and experimental development services in natural sciences and engineering
263		998111	Research and experimental development services in natural sciences
264		998112	Research and experimental development services in engineering and technology
265		998113	Research and experimental development services in medical sciences and pharmacy
266		998114	Research and experimental development services in agricultural sciences
267	Group 99812		Research and experimental development services in social sciences and humanities
268		998121	Research and experimental development services in social sciences
269		998122	Research and experimental development services in humanities
270	Group 99813		Interdisciplinary research services
271		998130	Interdisciplinary research and experimental development services
272	Group 99814		Research and development originals
273		998141	Research and development originals in pharmaceuticals
274		998142	Research and development originals in agriculture
275		998143	Research and development originals in biotechnology
276		998144	Research and development originals in computer related sciences
277		998145	Research and development originals in other fields nowhere else classified

278	Heading 9982		Legal and accounting services
279	Group 99821		Legal services
280		998211	Legal advisory and representation services concerning criminal law
281		998212	Legal advisory and representation services concerning other fields of law
282		998213	Legal documentation and certification services concerning patents, copyrights and other intellectual property rights
283		998214	Legal documentation and certification services concerning other documents
284		998215	Arbitration and conciliation services
285		998216	Other legal services nowhere else classified
286	Group 99822		Accounting, auditing and bookkeeping services
287		998221	Financial auditing services
288		998222	Accounting and bookkeeping services
289		998223	Payroll services
290		998224	Other similar services nowhere else classified
291	Group 99823		Tax consultancy and preparation services
292		998231	Corporate tax consulting and preparation services
293		998232	Individual tax preparation and planning services
294	Group 99824		Insolvency and receivership services
295		998240	Insolvency and receivership services
296	Heading 9983		Other professional, technical and business services
297	Group 99831		Management consulting and management services;
298		998311	Management consulting and management services including financial, strategic, human resources, marketing, operations and supply chain management
299		998312	Business consulting services including public relations services
300		998313	Information technology consulting and support services
301		998314	Information technology design and development services
302		998315	Hosting and information technology infrastructure provisioning services
303		998316	Information technology infrastructure and network management services
304		998319	Other information technology services nowhere else classified
305	Group 99832		Architectural services, urban and land planning and landscape architectural services
306		998321	Architectural advisory services
307		998322	Architectural services for residential building projects

308		998323	Architectural services for non-residential building projects
309		998324	Historical restoration architectural services
310		998325	Urban planning services
311		998326	Rural land planning services
312		998327	Project site master planning services
313		998328	Landscape architectural services and advisory services
314	Group 99833		Engineering services
315		998331	Engineering advisory services
316		998332	Engineering services for building projects
317		998333	Engineering services for industrial and manufacturing projects
318		998334	Engineering services for transportation projects
319		998335	Engineering services for power projects
320		998336	Engineering services for telecommunications and broadcasting projects
321		998337	Engineering services for waste management projects (hazardous and non-hazardous), for water, sewerage and drainage projects
322		998338	Engineering services for other projects nowhere else classified
323		998339	Project management services for construction projects
324	Group 99834		Scientific and other technical services
325		998341	Geological and geophysical consulting services
326		998342	Subsurface surveying services
327		998343	Mineral exploration and evaluation
328		998344	Surface surveying and map-making services
329		998345	Weather forecasting and meteorological services
330		998346	Technical testing and analysis services
331		998347	Certification of ships, aircraft, dams, and the like
332		998348	Certification and authentication of works of art
333		998349	Other technical and scientific services nowhere else classified
334	Group 99835		Veterinary services
335		998351	Veterinary services for pet animals
336		998352	Veterinary services for livestock
337		998359	Other veterinary services nowhere else classified
338	Group 99836		Advertising services and provision of advertising space or time
339		998361	Advertising Services
340		998362	Purchase or sale of advertising space or time, on commission
341		998363	Sale of advertising space in print media (except on commission)
342		998364	Sale of television and radio advertising time
343		998365	Sale of internet advertising space
344		998366	Sale of other advertising space or time (except on commission)

345	Group 99837		Market research and public opinion polling services
346		998371	Market research services
347		998372	Public opinion polling services
348	Group 99838		Photography and videography and their processing services
349		998381	Portrait photography services
350		998382	Advertising and related photography services
351		998383	Event photography and event videography services
352		998384	Specialty photography services
353		998385	Restoration and retouching services of photography
354		998386	Photographic and videographic processing services
355		998387	Other photography and videography and their processing services nowhere else classified
356	Group 99839		Other professional, technical and business services
357		998391	Specialty design services including interior design, fashion design, industrial design and other specialty design services
358		998392	Design originals
359		998393	Scientific and technical consulting services
360		998394	Original compilations of facts or information
361		998395	Translation and interpretation services
362		998396	Trademarks and franchises
363		998397	Sponsorship services and brand promotion services
364		998399	Other professional, technical and business services nowhere else classified
365	Heading 9984		Telecommunications, broadcasting and information supply services
366	Group 99841		Telephony and other telecommunications services
367		998411	Carrier services
368		998412	Fixed telephony services
369		998413	Mobile telecommunications services
370		998414	Private network services
371		998415	Data transmission services
372		998419	Other telecommunications services including fax services, telex services nowhere else classified
373	Group 99842		Internet telecommunications services
374		998421	Internet backbone services
375		998422	Internet access services in wired and wireless mode
376		998423	Fax, telephony over the internet
377		998424	Audio conferencing and video conferencing over the internet
378		998429	Other internet telecommunications services nowhere else classified
379	Group 99843		On-line content services
380		998431	On-line text based information such as online books, newspapers, periodicals, directories and the like
381		998432	On-line audio content

382		998433	On-line video content
383		998434	Software downloads
384		998439	Other on-line contents nowhere else classified
385	Group 99844		News agency services
386		998441	News agency services to newspapers and periodicals
387		998442	Services of independent journalists and press photographers
388		998443	News agency services to audiovisual media
389	Group 99845		Library and archive services
390		998451	Library services
391		998452	Operation services of public archives including digital archives
392		998453	Operation services of historical archives including digital archives
393	Group 99846		Broadcasting, programming and programme distribution services
394		998461	Radio broadcast originals
395		998462	Television broadcast originals
396		998463	Radio channel programmes
397		998464	Television channel programmes
398		998465	Broadcasting services
399		998466	Home programme distribution services
400	Heading 9985		Support services
401	Group 99851		Employment services including personnel search, referral service and labour supply service
402		998511	Executive or retained personnel search services
403		998512	Permanent placement services, other than executive search services
404		998513	Contract staffing services
405		998514	Temporary staffing services
406		998515	Long-term staffing (pay rolling) services
407		998516	Temporary staffing-to-permanent placement services
408		998517	Co-employment staffing services
409		998519	Other employment and labour supply services nowhere else classified
410	Group 99852		Investigation and security services
411		998521	Investigation services
412		998522	Security consulting services
413		998523	Security systems services
414		998524	Armoured car services
415		998525	Guard services
416		998526	Training of guard dogs
417		998527	Polygraph services
418		998528	Fingerprinting services
419		998529	Other security services nowhere else classified
420	Group 99853		Cleaning services
421		998531	Disinfecting and exterminating services
422		998532	Window cleaning services

423		998533	General cleaning services
424		998534	Specialised cleaning services for reservoirs and tanks
425		998535	Sterilisation of objects or premises (operating rooms)
426		998536	Furnace and chimney cleaning services
427		998537	Exterior cleaning of buildings of all types
428		998538	Cleaning of transportation equipment
429		998539	Other cleaning services nowhere else classified
430	Group 99854		Packaging services
431		998540	Packaging services of goods for others
432		998541	Parcel packing and gift wrapping
433		998542	Coin and currency packing services
434		998549	Other packaging services nowhere else classified
435	Group 99855		Travel arrangement, tour operator and related services
436		998551	Reservation services for transportation
437		998552	Reservation services for accommodation, cruises and package tours
438		998553	Reservation services for convention centres, congress centres and exhibition halls
439		998554	Reservation services for event tickets, cinema halls, entertainment and recreational services and other reservation services
440		998555	Tour operator services
441		998556	Tourist guide services
442		998557	Tourism promotion and visitor information services
443		998559	Other travel arrangement and related services nowhere else classified
444	Group 99859		Other support services
445		998591	Credit reporting and rating services
446		998592	Collection agency services
447		998593	Telephone-based support services
448		998594	Combined office administrative services
449		998595	Specialised office support services such as duplicating services, mailing services, document preparation and the like
450		998596	Events, exhibitions, conventions and trade shows organisation and assistance services
451		998597	Landscape care and maintenance services
452		998598	Other information services nowhere else classified
453		998599	Other support services nowhere else classified
454	Heading 9986		Support services to agriculture, hunting, forestry, fishing, mining and utilities
455	Group 99861		Support services to agriculture, hunting, forestry and fishing
456		998611	Support services to crop production
457		998612	Animal husbandry services
458		998613	Support services to hunting
459		998614	Support services to forestry and logging
460		998615	Support services to fishing

461		998619	Other support services to agriculture, hunting, forestry and fishing
462	Group 99862		Support services to mining
463		998621	Support services to oil and gas extraction
464		998622	Support services to other mining nowhere else classified
465	Group 99863		Support services to electricity, gas and water distribution
466		998631	Support services to electricity transmission and distribution
467		998632	Support services to gas distribution
468		998633	Support services to water distribution
469		998634	Support services to distribution services of steam, hot water and air-conditioning supply
470	Heading 9987		Maintenance, repair and installation (except construction) services
471	Group 99871		Maintenance and repair services of fabricated metal products, machinery and equipment
472		998711	Maintenance and repair services of fabricated metal products, except machinery and equipment
473		998712	Maintenance and repair services of office and accounting machinery
474		998713	Maintenance and repair services of computers and peripheral equipment
475		998714	Maintenance and repair services of transport machinery and equipment
476		998715	Maintenance and repair services of electrical household appliances
477		998716	Maintenance and repair services of telecommunication equipments and apparatus
478		998717	Maintenance and repair services of commercial and industrial machinery
479		998718	Maintenance and repair services of elevators and escalators
480		998719	Maintenance and repair services of other machinery and equipments
481	Group 99872		Repair services of other goods
482		998721	Repair services of footwear and leather goods
483		998722	Repair services of watches, clocks and jewellery
484		998723	Repair services of garments and household textiles
485		998724	Repair services of furniture
486		998725	Repair services of bicycles
487		998726	Maintenance and repair services of musical instruments

488		998727	Repair services for photographic equipment and cameras
489		998729	Maintenance and repair services of other goods nowhere else classified
490	Group 99873		Installation services (other than construction)
491		998731	Installation services of fabricated metal products, except machinery and equipment
492		998732	Installation services of industrial, manufacturing and service industry machinery and equipment
493		998733	Installation services of office and accounting machinery and computers
494		998734	Installation services of radio, television and communications equipment and apparatus
495		998735	Installation services of professional medical machinery and equipment, and precision and optical instruments
496		998736	Installation services of electrical machinery and apparatus nowhere else classified
497		998739	Installation services of other goods nowhere else classified
498	Heading 9988		Manufacturing services on physical inputs (goods) owned by others
499	Group 99881		Food, beverage and tobacco manufacturing services
500		998811	Meat processing services
501		998812	Fish processing services
502		998813	Fruit and vegetables processing services
503		998814	Vegetable and animal oil and fat manufacturing services
504		998815	Dairy product manufacturing services
505		998816	Other food product manufacturing services
506		998817	Prepared animal feeds manufacturing services
507		998818	Beverage manufacturing services
508		998819	Tobacco manufacturing services nowhere else classified
509	Group 99882		Textile, wearing apparel and leather manufacturing services
510		998821	Textile manufacturing services
511		998822	Wearing apparel manufacturing services
512		998823	Leather and leather product manufacturing services
513	Group 99883		Wood and paper manufacturing services
514		998831	Wood and wood product manufacturing services
515		998832	Paper and paper product manufacturing services

516	Group 99884		Petroleum, chemical and pharmaceutical product manufacturing services
517		998841	Coke and refined petroleum product manufacturing services
518		998842	Chemical product manufacturing services
519		998843	Pharmaceutical product manufacturing services
520	Group 99885		Rubber, plastic and other non-metallic mineral product manufacturing service
521		998851	Rubber and plastic product manufacturing services
522		998852	Plastic product manufacturing services
523		998853	Other non-metallic mineral product manufacturing services
524	Group 99886		Basic metal manufacturing services
525		998860	Basic metal manufacturing services
526	Group 99887		Fabricated metal product, machinery and equipment manufacturing services
527		998871	Structural metal product, tank, reservoir and steam generator manufacturing services
528		998872	Weapon and ammunition manufacturing services
529		998873	Other fabricated metal product manufacturing and metal treatment services
530		998874	Computer, electronic and optical product manufacturing services
531		998875	Electrical equipment manufacturing services
532		998876	General-purpose machinery manufacturing services nowhere else classified
533		998877	Special-purpose machinery manufacturing services
534	Group 99888		Transport equipment manufacturing services
535		998881	Motor vehicle and trailer manufacturing services
536		998882	Other transport equipment manufacturing services
537	Group 99889		Other manufacturing services
538		998891	Furniture manufacturing services
539		998892	Jewellery manufacturing services
540		998893	Imitation jewellery manufacturing services
541		998894	Musical instrument manufacturing services
542		998895	Sports goods manufacturing services
543		998896	Game and toy manufacturing services
544		998897	Medical and dental instrument and supply manufacturing services
545		998898	Other manufacturing services nowhere else classified
546	Heading 9989		Other manufacturing services; publishing, printing and reproduction services; materials recovery services
547	Group 99891		Publishing, printing and reproduction services
548		998911	Publishing, on a fee or contract basis
549		998912	Printing and reproduction services of recorded media, on a fee or contract basis

550	Group 99892		Moulding, pressing, stamping, extruding and similar plastic manufacturing services
551		998920	Moulding, pressing, stamping, extruding and similar plastic manufacturing services
552	Group 99893		Casting, forging, stamping and similar metal manufacturing services
553		998931	Iron and steel casting services
554		998932	Non-ferrous metal casting services
555		998933	Metal forging, pressing, stamping, roll forming and powder metallurgy services
556	Group 99894		Materials recovery (recycling) services, on a fee or contract basis
557		998941	Metal waste and scrap recovery (recycling) services, on a fee or contract basis
558		998942	Non-metal waste and scrap recovery (recycling) services, on a fee or contract basis
559	Section 9		Community, social and personal services and other miscellaneous services
560	Heading 9991		Public administration and other services provided to the community as a whole; compulsory social security services
561	Group 99911		Administrative services of the government
562		999111	Overall Government public services
563		999112	Public administrative services related to the provision of educational, health care, cultural and other social services, excluding social security service
564		999113	Public administrative services related to the more efficient operation of business
565		999119	Other administrative services of the government nowhere else classified
566	Group 99912		Public administrative services provided to the community as a whole
567		999121	Public administrative services related to External Affairs, Diplomatic and Consular services abroad
568		999122	Services related to foreign economic aid
569		999123	Services related to foreign military aid
570		999124	Military defence services
571		999125	Civil defence services
572		999126	Police and fire protection services
573		999127	Public administrative services related to law courts
574		999128	Administrative services related to the detention or rehabilitation of criminals
575		999129	Public administrative services related to other public order and safety affairs nowhere else classified
576	Group 99913		Administrative services related to compulsory social security schemes

577		999131	Administrative services related to sickness, maternity or temporary disablement benefit schemes
578		999132	Administrative services related to government employee pension schemes; old-age disability or survivors' benefit schemes, other than for government employees
579		999133	Administrative services related to unemployment compensation benefit schemes
580		999134	Administrative services related to family and child allowance programmes
581	Heading 9992		Education services
582	Group 99921		Pre-primary education services
583		999210	Pre-primary education services
584	Group 99922		Primary education services
585		999220	Primary education services
586	Group 99923		Secondary Education Services
587		999231	Secondary education services, general
588		999232	Secondary education services, technical and vocational
589	Group 99924		Higher education services
590		999241	Higher education services, general
591		999242	Higher education services, technical
592		999243	Higher education services, vocational
593		999249	Other higher education services
594	Group 99925		Specialised education services
595		999259	Specialised education services
596	Group 99929		Other education and training services and educational support services
597		999291	Cultural education services
598		999292	Sports and recreation education services
599		999293	Commercial training and coaching services
600		999294	Other education and training services nowhere else classified
601		999295	services involving conduct of examination for admission to educational institutions
602		999299	Other educational support services
603	Heading 9993		Human health and social care services
604	Group 99931		Human health services
605		999311	Inpatient services
606		999312	Medical and dental services
607		999313	Childbirth and related services
608		999314	Nursing and physiotherapeutic services
609		999315	Ambulance services
610		999316	Medical laboratory and diagnostic-imaging services
611		999317	Blood, sperm and organ bank services
612		999319	Other human health services including homeopathy, unani, ayurveda, naturopathy, acupuncture and the like

613	Group 99932		Residential care services for the elderly and disabled
614		999321	Residential health-care services other than by hospitals
615		999322	Residential care services for the elderly and persons with disabilities
616	Group 99933		Other social services with accommodation
617		999331	Residential care services for children suffering from mental retardation, mental health illnesses or substance abuse
618		999332	Other social services with accommodation for children
619		999333	Residential care services for adults suffering from mental retardation, mental health illnesses or substance abuse
620		999334	Other social services with accommodation for adults
621	Group 99934		Social services without accommodation for the elderly and disabled
622		999341	Vocational rehabilitation services
623		999349	Other social services without accommodation for the elderly and disabled nowhere else classified
624	Group 99935		Other social services without accommodation
625		999351	Child day-care services
626		999352	Guidance and counseling services nowhere else classified related to children
627		999353	Welfare services without accommodation
628		999359	Other social services without accommodation nowhere else classified
629	Heading 9994		Sewage and waste collection, treatment and disposal and other environmental protection services
630	Group 99941		Sewerage, sewage treatment and septic tank cleaning services
631		999411	Sewerage and sewage treatment services
632		999412	Septic tank emptying and cleaning services
633	Group 99942		Waste collection services
634		999421	Collection services of hazardous waste
635		999422	Collection services of non-hazardous recyclable materials
636		999423	General waste collection services, residential
637		999424	General waste collection services, other nowhere else classified
638	Group 99943		Waste treatment and disposal services
639		999431	Waste preparation, consolidation and storage services
640		999432	Hazardous waste treatment and disposal services
641		999433	Non-hazardous waste treatment and disposal services
642	Group 99944		Remediation services
643		999441	Site remediation and clean-up services
644		999442	Containment, control and monitoring services and other site remediation services
645		999443	Building remediation services
646		999449	Other remediation services nowhere else classified

647	Group 99945		Sanitation and similar services
648		999451	Sweeping and snow removal services
649		999459	Other sanitation services nowhere else classified
650	Group 99949		Others
651		999490	Other environmental protection services nowhere else classified
652	Heading 9995		Services of membership organisations
653	Group 99951		Services furnished by business, employers and professional organisations Services
654		999511	Services furnished by business and employers organisations
655		999512	Services furnished by professional organisations
656	Group 99952		Services furnished by trade unions
657		999520	Services furnished by trade unions
658	Group 99959		Services furnished by other membership organisations
659		999591	Religious services
660		999592	Services furnished by political organisations
661		999593	Services furnished by human rights organisations
662		999594	Cultural and recreational associations
663		999595	Services furnished by environmental advocacy groups
664		999596	Services provided by youth associations
665		999597	Other civic and social organisations
666		999598	Home owners associations
667		999599	Services provided by other membership organisations nowhere else classified
668	Heading 9996		Recreational, cultural and sporting services
669	Group 99961		Audiovisual and related services
670		999611	Sound recording services
671		999612	Motion picture, videotape, television and radio programme production services
672		999613	Audiovisual post-production services
673		999614	Motion picture, videotape and television programme distribution services
674		999615	Motion picture projection services
675	Group 99962		Performing arts and other live entertainment event presentation and promotion services
676		999621	Performing arts event promotion and organisation services
677		999622	Performing arts event production and presentation services
678		999623	Performing arts facility operation services
679		999629	Other performing arts and live entertainment services nowhere else classified
680	Group 99963		Services of performing and other artists
681		999631	Services of performing artists including actors, readers, musicians, singers, dancers, television personalities, independent models and the like

682		999632	Services of authors, composers, sculptors and other artists, except performing artists
683		999633	Original works of authors, composers and other artists except performing artists, painters and sculptors
684	Group 99964		Museum and preservation services
685		999641	Museum and preservation services of historical sites and buildings
686		999642	Botanical, zoological and nature reserve services
687	Group 99965		Sports and recreational sports services
688		999651	Sports and recreational sports event promotion and organisation services
689		999652	Sports and recreational sports facility operation services
690		999659	Other sports and recreational sports services nowhere else classified
691	Group 99966		Services of athletes and related support services
692		999661	Services of athletes
693		999662	Support services related to sports and recreation
694	Group 99969		Other amusement and recreational services
695		999691	Amusement park and similar attraction services
696		999692	Gambling and betting services including similar online services
697		999693	Coin-operated amusement machine services
698		999694	Lottery services
699		999699	Other recreation and amusement services nowhere else classified
700	Heading 9997		Other services
701	Group 99971		Washing, cleaning and dyeing services
702		999711	Coin-operated laundry services
703		999712	Dry-cleaning services (including fur product cleaning services)
704		999713	Other textile cleaning services
705		999714	Pressing services
706		999715	Dyeing and colouring services
707		999719	Other washing, cleaning and dyeing services nowhere else classified
708	Group 99972		Beauty and physical well-being services
709		999721	Hairdressing and barbers services
710		999722	Cosmetic treatment (including cosmetic or plastic surgery), manicuring and pedicuring services
711		999723	Physical well-being services including health club and fitness centre
712		999729	Other beauty treatment services nowhere else classified
713	Group 99973		Funeral, cremation and undertaking services
714		999731	Cemeteries and cremation services
715		999732	Undertaking services

716	Group 99979		Other miscellaneous services
717		999791	Services involving commercial use or exploitation of any event
718		999792	Agreeing to do an act
719		999793	Agreeing to refrain from doing an act
720		999794	Agreeing to tolerate an act
721		999795	Conduct of religious ceremonies or rituals by persons
722		999799	Other services nowhere else classified
723	Heading 9998		Domestic services
724	Group 99980		Domestic services
725		999800	Domestic services both part time and full time
726	Heading 9999		Services provided by extraterritorial organisations and bodies
727	Group 99990		Services provided by extraterritorial organisations and bodies
728		999900	Services provided by extraterritorial organisations and bodies

3. This notification shall come into force with retrospective effect from the 1st day of July, 2017.

By order
Onkar Sharma
Principal Secretary (E&T).

ब अदालत श्री दीक्षांत ठाकुर, सहायक समाहर्ता द्वितीय श्रेणी, एवं नायब तहसीलदार, शाहपुर,
जिला कांगड़ा, हि0 प्र0

इम्मॅनूएल पूर्ण चन्द पुत्र दुनी चन्द, निवासी शाहपुर, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

आम जनता

विषय.—महाल शाहपुर के राजस्व रिकॉर्ड में नाम की दुरुस्ती बारे।

प्रार्थी ने इस अदालत में शपथ-पत्र सहित दरखास्त गुजारी है कि उसका नाम तहसील शाहपुर के राजस्व अभिलेख के महाल शाहपुर में पूर्ण चन्द पुत्र दुनी चन्द दर्ज है, जबकि प्रार्थी ने ईसाई बनने के उपरान्त अपने नाम के साथ इम्मॅनूएल शब्द जोड़ कर अपना नाम इम्मॅनूएल पूर्ण चन्द पुत्र दुनी चन्द दर्ज करवा लिया है जो अब सभी प्रकार के अन्य दस्तावेजों में दर्ज है। प्रार्थी राजस्व रिकार्ड में अपने सही नाम इम्मॅनूएल पूर्ण चन्द पुत्र दुनी चन्द का इन्द्राज करवाना चाहता है।

अतः इशतहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त राजस्व रिकार्ड में प्रार्थी के नाम की दुरुस्ती करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 15-07-2017 को असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। उसके बाद कोई उजर जेरे समायत न होगा।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री दीक्षांत ठाकुर, कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा, हि0 प्र0

मुकद्दमा : इन्द्राज मृत्यु तिथि

तारीख पेशी : 15-07-2017

सुरेश कुमार पुत्र धनू निवासी धनोटू, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

1. आम जनता
2. सचिव, ग्राम पंचायत डुढम्ब।

विषय.—बाबत इन्द्राज मृत्यु तिथि अधीन जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त विषय से सम्बन्धित मुकद्दमा इस अदालत में विचाराधीन है जिसमें प्रार्थी ने दावा किया है कि उसकी दादी दलम्बू पत्नी दितू का देहान्त दिनांक 20-04-1983 को महाल धनोटू में हुआ है परन्तु अज्ञानतावश उसकी मृत्यु तिथि का इन्द्राज सम्बन्धित ग्राम पंचायत डुढम्ब, तहसील शाहपुर के रिकार्ड में दर्ज न करवाया जा सका है।

अतः इस इशतहार के माध्यम से आम जनता को सूचित किया जाता है कि प्रार्थी की दादी की उपरोक्त मृत्यु तिथि को सम्बन्धित ग्राम पंचायत डुढम्ब के रिकार्ड में दर्ज करवाने बारे यदि किसी को कोई एतराज हो तो वह दिनांक 15-07-2017 को इस अदालत में असालतन या वकालतन हाजिर होकर अपना पक्ष रख सकता है। हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी भी प्रकार का कोई दावा स्वीकार्य न होगा और नियमानुसार उपरोक्त मृत्यु तिथि दर्ज करने बारे आदेश पारित कर दिए जाएंगे।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हि0 प्र0।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)

मिसल नम्बर : 24/02-06-2017

श्री हिम सिंह पुत्र श्री जगत राम, निवासी गांव पाली, डा0 घाट, तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

बनाम

विषय.—राजस्व रिकार्ड में नाम दुरुस्ती बारे।

श्री हिम सिंह पुत्र श्री जगत राम, निवासी गांव पाली, डा0 घाट, तहसील बालीचौकी, जिला मण्डी (हि0 प्र0) ने एक आवेदन पत्र मय शपथ पत्र इस आशय के साथ गुजारा है कि उसका नाम पंचायत रिकार्ड में हिम सिंह दर्ज है परन्तु राजस्व रिकार्ड के महाल काण्डी में गलती से भीम सिंह दर्ज हुआ है। अब प्रार्थी अपना नाम राजस्व रिकार्ड में पंचायत रिकार्ड के आधार पर हिम सिंह दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उक्त नाम को राजस्व रिकार्ड में दुरुस्त करने बारे किसी को कोई आपत्ति हो तो वह दिनांक 24-07-2017 को या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित हो कर अपनी आपत्ति दर्ज कर सकता है। उक्त तिथि के पश्चात् कोई भी एतराज काबिले समायत नहीं होगा तथा नियमानुसार आवेदन पत्र पर कार्यवाही की जाएगी।

आज दिनांक 23-06-2017 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

ईश्तहार

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील बालीचौकी, जिला मण्डी, हि0 प्र0

मिसल नं0 : 26/02-06-2017

श्री आत्म चन्द पुत्र नीके राम, निवासी नौणा, डा0 व तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)

बनाम

आम जनता

विषय.—राजस्व रिकार्ड में नाम दुरुस्ती बारे।

श्री आत्म चन्द पुत्र नीके राम, निवासी नौणा, डा0 व तहसील बालीचौकी, जिला मण्डी (हि0 प्र0) ने एक आवेदन पत्र मय शपथ पत्र इस आशय के साथ गुजारा है कि उसका नाम पंचायत रिकार्ड में आत्म चन्द दर्ज है परन्तु राजस्व रिकार्ड के महाल नौणा में गलती से ठाकर उर्फ आत्मा राम दर्ज हुआ है। अब प्रार्थी अपना नाम राजस्व रिकार्ड में पंचायत रिकार्ड के आधार पर आत्म चन्द दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उक्त नाम को राजस्व रिकार्ड में दुरुस्त करने बारे किसी को कोई आपत्ति हो तो वह दिनांक 24-07-2017 को या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित हो कर अपनी आपत्ति दर्ज कर सकता है। उक्त तिथि के पश्चात् कोई भी एतराज काबिले समायत नहीं होगा तथा नियमानुसार आवेदन पत्र पर कार्यवाही की जाएगी।

आज दिनांक 23-06-2017 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील बालीचौकी, जिला मण्डी, हि0 प्र0

मिसल नं0 : 23/02-06-2017

श्री उत्तम राम पुत्र चिट्ठू पुत्र धर्मू निवासी गांव व डा0 खोलानाल तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

बनाम

आम जनता

विषय.—राजस्व रिकार्ड में नाम दुरुस्ती बारे।

श्री उत्तम राम पुत्र चिट्ठू पुत्र धर्मू निवासी गांव व डा0 खोलानाल तहसील बालीचौकी, जिला मण्डी (हि0 प्र0) ने एक आवेदन पत्र मय शपथ पत्र इस आशय के साथ गुजारा है कि उसके पिता का नाम पंचायत रिकार्ड में चिट्ठू पुत्र धर्मू दर्ज है परन्तु राजस्व रिकार्ड के महाल खोलानाल में गलती से जेदू दर्ज हुआ है। अब प्रार्थी अपने पिता का नाम राजस्व रिकार्ड में पंचायत रिकार्ड के आधार पर चिट्ठू दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उक्त नाम को राजस्व रिकार्ड में दुरुस्त करने बारे किसी को कोई आपत्ति हो तो वह दिनांक 24-07-2017 को या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित हो कर अपनी आपत्ति दर्ज कर सकता है। उक्त तिथि के पश्चात् कोई भी एतराज काबिले समायत नहीं होगा तथा नियमानुसार आवेदन पत्र पर कार्यवाही की जाएगी।

आज दिनांक 23-06-2017 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील बालीचौकी, जिला मण्डी, हि0 प्र0

मिसल नं0 : 25/02-06-2017

श्री रुप चन्द पुत्र प्यारे राम, निवासी गांव व डाकखाना खुहण, तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

बनाम

आम जनता

विषय.—राजस्व रिकार्ड में नाम दुरुस्ती बारे।

श्री रुप चन्द पुत्र प्यारे राम, निवासी गांव व डाकखाना खुहण, तहसील बालीचौकी, जिला मण्डी (हि0 प्र0) ने एक आवेदन पत्र मय शपथ पत्र इस आशय के साथ गुजारा है कि उसका नाम पंचायत रिकार्ड में रुप चन्द दर्ज है परन्तु राजस्व रिकार्ड के महाल काण्डी में गलती से रुपी दर्ज हुआ है। अब प्रार्थी अपना नाम राजस्व रिकार्ड में पंचायत रिकार्ड के आधार पर रुप चन्द दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उक्त नाम को राजस्व रिकार्ड में दुरुस्त करने बारे किसी को कोई आपत्ति हो तो वह दिनांक 24-07-2017 को या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित हो कर अपनी आपत्ति दर्ज कर सकता है। उक्त तिथि के पश्चात् कोई भी एतराज काबिले समायत नहीं होगा तथा नियमानुसार आवेदन पत्र पर कार्यवाही की जाएगी।

आज दिनांक 23-06-2017 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

ब अदालत श्री दिवान सिंह नेगी, नायब तहसीलदार/कार्यकारी दण्डाधिकारी, उप-तहसील ननखरी,
जिला शिमला, हि0 प्र0

वाद संख्या : 18/16

तारीख मजरुआ : 23-09-2016

श्री आन दास पुत्र श्री लाठी, निवासी गांव नूण, डाकघर खुन्नी, उप-तहसील ननखरी, जिला शिमला, हि0 प्र0 . . प्रार्थी।

बनाम

आम जनता

. . प्रत्यार्थी

विषय.—प्रार्थना पत्र नाम दुरुस्ती बारे।

श्री आन दास पुत्र श्री लाठी, निवासी गांव नूण, डाकघर खुन्नी, उप-तहसील ननखरी, जिला शिमला, हि0 प्र0 ने इस अदालत में आवेदन-पत्र मय शपथ-पत्र गुजारा है कि उसका नाम राजस्व रिकार्ड में शिरखार पुत्र श्री लाठी दर्ज है जो कि गलत है। प्रार्थी जिसे दुरुस्त करवाकर आन दास पुत्र श्री लाठी सही दर्ज करवाना चाहता है। आवेदक ने अपना ब्यान हल्फिया व अन्य दस्तावेज संलग्न कर अनुरोध किया है कि उसका नाम राजस्व रिकार्ड में दुरुस्त किया जावे।

अतः इस इश्तहार द्वारा आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त नाम दुरुस्ती करने बारे कोई एतराज हो तो वह दिनांक 29-07-2017 को सुबह 10.00 बजे असालतन/वकालतन हाजिर होकर लिखित व मौखिक एतराज पेश करें अन्यथा उजर/एतराज पेश न होने की सूरत में यह समझा जायेगा कि उक्त नाम दुरुस्ती बारे किसी को कोई एतराज नहीं है तथा सम्बन्धित गिरदावर हल्का ननखरी को नाम दुरुस्त करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 28-06-2017 को मेरे हस्ताक्षर व मोहर सहित अदालत द्वारा जारी हुआ।

मोहर।

दिवान सिंह नेगी,
नायब तहसीलदार/कार्यकारी दण्डाधिकारी,
उप-तहसील ननखरी, जिला शिमला (हि0 प्र0)।

**ब अदालत श्री दिवान सिंह नेगी, नायब तहसीलदार/कार्यकारी दण्डाधिकारी, उप-तहसील ननखरी,
जिला शिमला, हि0 प्र0**

वाद संख्या : 6/17

तारीख मजरुआ : 1-06-2017

कृष्ण देवी पत्नी स्व0 श्री हिरा नन्द, निवासी गांव खुन्नी, उप-तहसील ननखरी, जिला शिमला,
हि0 प्र0 . . प्रार्थिया।

बनाम

आम जनता

प्रत्यार्थी

विषय.—प्रार्थना-पत्र ग्राम पंचायत खुन्नी के पंचायत रिकार्ड में जन्म तिथि पंजीकरण करवाने बारे।

श्रीमती कृष्ण देवी पत्नी स्व0 श्री हिरा नन्द, निवासी गांव खुन्नी, उप-तहसील ननखरी, जिला शिमला, हि0 प्र0 ने प्रार्थना-पत्र पेश कर गुजारिश की है कि उसकी जन्म तिथि 30-07-1961 है जो उसके माईके के रिकार्ड के मुताबिक सही है, परन्तु प्रार्थिया की जन्म तिथि उसके विवाह कि पश्चात् ग्राम पंचायत खुन्नी पनोली के पंचायत रिकार्ड में 1958 गलत दर्ज की गई है। प्रार्थिया जिसे ग्राम पंचायत खुन्नी पनोली में सही दर्ज करवाना चाहती है।

अतः इस इशतहार द्वारा आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त जन्म तिथि दुरुस्ती करने बारे कोई एतराज हो तो वह दिनांक 29-07-2017 को सुबह 10. 00 बजे असालतन/वकालतन हाजिर होकर लिखित व मौखिक एतराज पेश करें अन्यथा उजर/एतराज पेश न होने की सूरत में यह समझा जावेगा कि उक्त जन्म तिथि दुरुस्ती बारे किसी को कोई एतराज नहीं है तथा सम्बन्धित सचिव ग्राम पंचायत खुन्नी पनोली को जन्म तिथि दुरुस्त करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 28-06-2017 को मेरे हस्ताक्षर व मोहर सहित अदालत द्वारा जारी हुआ।

मोहर।

दिवान सिंह नेगी,
नायब तहसीलदार/कार्यकारी दण्डाधिकारी,
उप-तहसील ननखरी, जिला शिमला (हि0 प्र0)।

**ब अदालत श्री दिवान सिंह, नायब तहसीलदार/कार्यकारी दण्डाधिकारी, उप-तहसील ननखरी,
जिला शिमला, हि0 प्र0**

वाद संख्या : 21/16

तारीख मजरुआ : 19-12-2016

श्री सुरेन्द्र कुमार पुत्र श्री बाली, निवासी गांव व डाकघर खडाहण, उप-तहसील ननखरी, जिला शिमला, हि0 प्र0 . . प्रार्थी।

बनाम

आम जनता

. . प्रत्यार्थी

विषय.—प्रार्थना पत्र नाम दुरुस्ती बारे।

श्री सुरेन्द्र कुमार पुत्र श्री बाली, निवासी गांव व डाकघर खडाहण, उप-तहसील ननखरी, जिला शिमला, हि0 प्र0 ने इस अदालत में आवेदन-पत्र मय शपथ-पत्र गुजारा है कि उसका नाम राजस्व रिकार्ड में महेन्द्र सिंह पुत्र बाली दर्ज है जो कि गलत है प्रार्थी जिसे दुरुस्त करवाकर सुरेन्द्र कुमार पुत्र श्री बाली सही

दर्ज करवाना चाहता है। आवेदक ने अपना ब्यान हल्फिया व अन्य दस्तावेज संलग्न कर अनुरोध किया है कि उसका नाम राजस्व रिकार्ड में दुरुस्त किया जावे।

अतः इस इशतहार द्वारा आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त नाम दुरुस्ती करने बारे कोई एतराज हो तो वह दिनांक 29-07-2017 को सुबह 10.00 बजे असागतन/वकालतन हाजिर होकर लिखित व मौखिक एतराज पेश करें अन्यथा उजर/एतराज पेश न होने की सूरत में यह समझा जावेगा कि उक्त नाम दुरुस्ती बारे किसी को कोई एतराज नहीं है तथा सम्बन्धित गिरदावर हल्का ननखरी को नाम दुरुस्त करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 28-06-2017 को मेरे हस्ताक्षर व मोहर सहित अदालत द्वारा जारी हुआ।

मोहर।

दिवान सिंह नेगी,
नायब तहसीलदार/कार्यकारी दण्डाधिकारी,
उप-तहसील ननखरी, जिला शिमला (हि0 प्र0)।

ब अदालत श्री गुरमीत जी0 नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू,
जिला शिमला, हि0 प्र0

श्री वैभव सूद पुत्र श्री पंकज सूद, निवासी रोहडू, तहसील रोहडू, जिला शिमला, हि0 प्र0 प्राथी

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री पंकज सूद पुत्र श्री श्याम लाल सूद, निवासी रोहडू, तहसील रोहडू, जिला शिमला, हि0 प्र0 ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसके पुत्र वैभव सूद का जन्म दिनांक 28-07-1995 को हुआ है परन्तु अज्ञानतावश उसका नाम व जन्म तिथि नगर परिषद् रोहडू के जन्म रजिस्टर में आज तक पंजीकृत नहीं किया गया है तथा उसके नाम व जन्म तिथि को दर्ज करने के आदेश नगर परिषद् रोहडू को दिये जावें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि नगर परिषद् रोहडू में दर्ज करने में किसी भी प्रकार का उजर व एतराज हो तो वह दिनांक 25-07-2017 को असागतन व वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करें। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम व जन्म तिथि ग्राम पंचायत में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नाम व जन्म तिथि नगर परिषद् रोहडू में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 06-07-2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गुरमीत जी0 नेगी,
कार्यकारी दण्डाधिकारी,
रोहडू, जिला शिमला (हि0 प्र0)।

**In the Court of Shri Ajit Bhardwaj, H.A.S., Sub Divisional Magistrate Shimla (Urban),
District Shimla, Himachal Pradesh**

Shri Mehar Singh Panjwal s/o Shri Dyal Singh, r/o Village Lower Chauntra, P.O. Chauntra,
Tehsil Joginder Nagar, District Mandi, H.P. . . Applicant.

Versus

General Public .. Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Shri Mehar Singh Panjwal s/o Shri Dyal Singh, r/o Village Lower Chauntra, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. has preferred an application to the undersigned for registration of the date of birth of his daughter namely Neelam Kumari (DOB 06-01-1989) in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 5-8-2017 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 5th day of July, 2017.

Seal.

AJIT BHARDWAJ,
Sub-Divisional Magistrate,
Shimla (Urban).

**In the Court of Shri Ajit Bhardwaj, H.A.S., Sub Divisional Magistrate Shimla (Urban),
District Shimla, Himachal Pradesh**

Indira Wati Thakur d/o Shri Gauri Shankar Thakur, r/o Lakshman Niwas Tutikandi, Shimla,
Tehsil and District Shimla, H.P. . . Applicant.

Versus

General Public .. Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Indira Wati Thakur d/o Shri Gauri Shankar Thakur, r/o Lakshman Niwas Tutikandi, Shimla, Tehsil and District Shimla, H.P. has preferred an application to the undersigned for registration of her date of birth i.e (DOB 10-03-1949) in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 4-8-2017 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of July, 2017.

Seal.

AJIT BHARDWAJ,
Sub-Divisional Magistrate,
Shimla (Urban).

**In the Court of Shri Ajit Bhardwaj, H.A.S., Sub Divisional Magistrate Shimla (Urban),
District Shimla, Himachal Pradesh**

Shri Neel Chand s/o Shri Shiv Ram, r/o Reoghati, P.O. Deoru Khaneti, Tehsil Kotkhai,
District Shimla, H.P. . . Applicant.

Versus

General Public

.. Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Shri Neel Chand s/o Shri Shiv Ram, r/o Reoghati, P.O. Deoru Khaneti, Tehsil Kotkhai, District Shimla, H.P. has preferred an application to the undersigned for registration of the date of birth of his grand daughter namely Shivanya (DOB 17-10-2015) in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 29-7-2017 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 29th day of June, 2017.

Seal.

AJIT BHARDWAJ,
Sub-Divisional Magistrate,
Shimla (Urban).

न्यायालय सहायक समाहर्ता प्रथम वर्ग सुन्नी, जिला शिमला, हिमाचल प्रदेश

वाद संख्या : 7/XIII-A-I/2017

तारीख मरजुआ : 07-07-2017

श्री उमेश कुमार

बनाम

आम जनता

दरखास्त बराये दुरुस्ती नाम।

नोटिस बनाम : आम जनता।

हरगाह खास व आम को बजरिया नोटिस सूचित किया जाता है कि श्री उमेश कुमार पुत्र नरेन्द्र सिंह, निवासी महाल सनाहू, परगना चौथा, तहसील सुन्नी, जिला शिमला (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत कर अभिव्यक्त किया है कि प्रार्थी का नाम राजस्व रिकार्ड में उपेश कुमार पुत्र नरेन्द्र सिंह दर्ज है जो कि गलत है परन्तु पंचायत रिकार्ड व अन्य प्रमाण पत्र में नाम उमेश कुमार पुत्र नरेन्द्र सिंह दर्ज है जो कि सही व सत्य है। उन्होंने उसे ठीक करने के लिए प्रार्थना पत्र प्रस्तुत किया है।

अतः इस प्रार्थना पत्र बारे आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को नाम दुरुस्त करने में आपत्ति हो तो वह अपनी आपत्ति लिखित रूप में दिनांक 07-08-2017 अथवा इससे पूर्व इस न्यायालय को प्रस्तुत करें। तदोपरान्त कोई आपत्ति मान्य नहीं होगी।

हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 07-07-2017 को जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय वर्ग,
सुन्नी, जिला शिमला, हि0 प्र0।

**In the Court of Shri Tashi Sandup, HAS, Marriage Officer-cum-Sub-Divisional Magistrate,
Theog, District Shimla, H. P.**

In the matter of :—

1. Shri Ratti Ram s/o Shri Dhani Ram, Village Sarion, Tehsil Theog, District Shimla, H.P.
2. Savitry Devi d/o Shri Mathu Ram, Village Batiwara, P.O. Dhamandri, Tehsil Theog, District Shimla, H.P. . . Applicant.

Versus

The General Public

. . Respondent.

Proclamation for the registration of Marriage under section 15 of the Special Marriage Act, 1954.

Shri Ratti Ram s/o Shri Dhani Ram, and Savitry Devi d/o Shri Mathu Ram have filed an application along with affidavit before the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 04-01-1990 and they are living as husband and wife since then, hence their marriage is to be registered under Special Marriage Act, 1954 under section 15.

Therefore, the General Public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before within 30 days from the date of publication of this notice after that no objection will be entertained and Marriage will be registered accordingly.

Given under my hand and seal of the court on this 29th day of May, 2017.

Seal.

TASHI SANDUP, HAS
Marriage Officer-cum-Sub-Divisional Magistrate,
Theog, District Shimla, H.P.

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार) बद्दी, जिला सोलन, हि0 प्र0

मुकद्दमा नं0 : 27 / 2016 तारीख रजुआ : 29-08-2016

किस्म मुकद्दमा : दरखास्त बराये
विवाह इन्द्राज हेतु

श्री अमनप्रित सिंह सैणी पुत्र श्री सलिन्द्र सिंह व श्रीमती मिनाक्षी कश्यप पत्नी श्री अमनप्रित सिंह सैणी,
निवासीयान ग्राम ठेडा, डा0 लोदीमाजरा, तहसील बद्दी, जिला सोलन, हि0 प्र0 वादीगण।

बनाम

आम जनता : बजरिया ग्राम पंचायत मानपुरा, तहसील बद्दी, जिला सोलन, हि0 प्र0 प्रतिवादी।

दावा अन्तर्गत जेर अधिनियम 1996 की धारा 8(4) बराये शादी इन्द्राज करवाने बारे ग्राम पंचायत मानपुरा, श्री अमनप्रित सिंह सैणी पुत्र श्री सलिन्द्र सिंह, निवासी ग्राम ठेडा, तहसील बद्दी व श्रीमती मिनाक्षी कश्यप पुत्री श्री देवी दयाल, निवासी ग्राम रख राम सिंह, तहसील बद्दी, जिला सोलन, हि0 प्र0।

इशतहार बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रत्यर्थीगण श्री अमनप्रित सिंह सैणी पुत्र श्री सलिन्द्र सिंह निवासी ग्राम ठेडा, तहसील बद्दी, व श्रीमती मिनाक्षी कश्यप पुत्री श्री देवी दयाल निवासी ग्राम रख राम सिंह, तहसील नालागढ़, जिला सोलन, हि0 प्र0 ने प्रार्थना पत्र प्रस्तुत कर अनुरोध किया है कि उनकी शादी दिनांक 30-01-2015 को सिख धर्म के रीति-रिवाज अनुसार सम्पन्न हुई थी जिसका प्रत्यर्थीगण व उनके परिवार वाले किसी कारणवश ग्राम पंचायत मानपुरा, तहसील बद्दी, जिला सोलन के रिकार्ड में इन्द्राज नहीं करवा सके थे। जिसका अब ग्राम पंचायत मानपुरा, तहसील बद्दी के रिकार्ड में शादी इन्द्राज करवाना चाहते हैं। अतः हर आम/खास जनता को बजरिया इशतहार सूचित किया जाता है कि यदि उपरोक्त श्री अमनप्रित सिंह सैणी पुत्र सलिन्द्र सिंह, निवासी ग्राम ठेडा, तहसील बद्दी व श्रीमती मिनाक्षी कश्यप पुत्री श्री देवी दयाल निवासी ग्राम रख राम सिंह, तहसील नालागढ़, जिला सोलन, हि0 प्र0 की शादी का इन्द्राज ग्राम पंचायत मानपुरा के रिकार्ड में दर्ज होने बारे अगर किसी को कोई एतराज है तो वह दिनांक 20-07-2017 को इस न्यायालय में उपस्थित आकर एतराज प्रस्तुत कर सकते हैं अन्यथा प्रत्यर्थीगण द्वारा प्रस्तुत ब्यान हल्फियाजात के आधार पर शादी इन्द्राज हेतु आगामी कार्यवाही अमल में लाई जाकर सम्बन्धित ग्राम पंचायत को विवाह इन्द्राज करने के आदेश पारित कर दिये जाएंगे। बाद गुजरने मियाद किसी का कोई एतराज काबले समायत न होगा।

आज दिनांक 19-06-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
बद्दी, जिला सोलन, हि0 प्र0।

**In the Court of Shri Narayan Singh Chauhan, Executive Magistrate (Tehsildar)
Baddi, District Solan, H. P.**

Case No. : 13/2017

Date of Institution : 22-06-2017

Date of Decision/
Fixed for : 28-07-2017

Smt. Tripta Devi wife of Shri Narvinder Singh, r/o Village Chaklot, P.O. Sherpur Vet, Tehsil Samrala, District Ludhiana (Punjab).

Versus

General Public through Gram Panchayat Haripur Sandholi, Tehsil Baddi, District Solan, H.P.

Application under section 13(3) of H.P. Birth and Death Registration Act, 1969.

Proclamation:

Smt. Tripta Devi wife of Shri Narvinder Singh, r/o Village Chaklot, P.O. Sherpur Vet, Tehsil Samrala, District Ludhiana (Punjab), has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that his son namely Dilpreet Singh son of Shri Narvinder Singh and Smt. Tripta Devi, r/o Village Chaklot, P.O. Sherpur Vet, Tehsil Samrala, District Ludhiana (Punjab) was born on 25-12-2016 at Village Sandholi, P.O. Haripur Sandholi Tehsil Baddi, District Solan, H. P. but his birth could not be registered in the birth records of Gram Panchayat Haripur Sandholi, Tehsil Baddi, District Solan (H.P.) within stipulated period. He prayed for passing necessary orders to the Secretary, Gram Panchayat Haripur Sandholi, Tehsil Baddi, District Solan (H.P.) for entering the same.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection regarding registering the birth of Dilpreet Singh son of Shri Narvinder Singh, r/o Village Chaklot, P.O. Sherpur Vet, Tehsil Samrala, District Ludhiana (Punjab) may file their objection in this court on or before 28-07-2017, failing which no objection shall be entertained.

Given under my hand and seal of the court on this 22nd day of June, 2017.

Seal.

NARAYAN SINGH CHAUHAN,
Executive Magistrate (Tehsildar),
Baddi, District Solan, H. P.

ब अदालत कार्यकारी दण्डाधिकारी (ना० तह०) हरोली, जिला ऊना, हि० प्र०

सतनाम सिंह पुत्र बावू

बनाम

आम जनता

आवेदन—पत्र अधीन धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

सतनाम सिंह पुत्र वावू, वासी वढ़ेडा ने इस कार्यालय/न्यायालय में निवेदन किया है कि उसकी माता रखी की मृत्यु दिनांक 7-5-2001 को हुई है लेकिन उनकी मृत्यु तिथि ग्राम पंचायत के अभिलेख में दर्ज नहीं है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 29-7-2017 को प्रातः 10.00 बजे अधोहस्ताक्षरी के कार्यालय/न्यायालय में उपस्थित होकर कर सकता है।

यदि उपरोक्त वर्णित तिथि को किसी भी व्यक्ति का कोई उजर या एतराज इस न्यायालय में प्राप्त नहीं होता है तो इस न्यायालय द्वारा जन्म तिथि दर्ज करने हेतु ग्राम पंचायत बढ़ेडा को आदेश दे दिये जाएंगे।

आज दिनांक 28-6-2017 को मेरे हस्ताक्षर एवं कार्यालय/न्यायालय मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
हरोली, जिला ऊना (हि0 प्र0)।