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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 8 सितम्बर, 2017 / 17 भाद्रपद, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

D/Shala, the 19th July, 2017

No.Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	409/15	Ramesh Kumar	E.E. HPPWD, Killar	24-06-2017
2.	422/15	Karam Chand	E.E. HPPWD, Killar	24-06-2017
3.	413/15	Puran Chand	E.E. HPPWD, Killar	24-06-2017
4.	392/15	Rasalu/Risalu	E.E. HPPWD, Killar	24-06-2017
5.	414/15	Paras Ram	E.E. HPPWD, Killar	24-06-2017
6.	412/15	Kuldeep	E.E. HPPWD, Killar	24-06-2017
7.	391/15	Inder Singh	E.E. HPPWD, Killar	24-06-2017
8.	486/15	Rajinder	E.E. HPPWD, Killar	24-06-2017
9.	515/15	Ram Singh	E.E. I&PH/HPPWD, Killar	24-06-2017
10.	514/15	Thakur Dass	E.E. I&PH/HPPWD, Killar	24-06-2017
11.	586/15	Krishan Dev	E.E. HPPWD, Dharampur	24-06-2017
12.	524/16	Ram Singh	E.E. HPPWD, Dharampur	24-06-2017
13.	523/16	Sheela Devi	E.E. HPPWD, Dharampur	24-06-2017
14.	522/16	Arun Kumar	E.E. HPPWD, Dharampur	24-06-2017
15.	527/16	Chameli Devi	E.E. HPPWD, Dharampur	24-06-2017
16.	520/16	Kamla Devi	E.E. HPPWD, Dharampur	24-06-2017
17.	521/16	Kamli Devi	E.E. HPPWD, Dharampur	24-06-2017
18.	33/15	Narvada Devi	E.E. HPPWD, Joginder Nagar	24-06-2017
19.	468/15	Tulsi Ram	D.F. O Lahoul	24-06-2017
20.	466/15	Hemant Kumar	D.F.O. Lahoul	24-06-2017
21.	465/15	Tej Singh	D.F. O Lahoul	24-06-2017
22.	467/15	Leela Mani	D.F.O. Lahoul	24-06-2017
23.	469/15	Daulat Ram	D.F. O Lahoul	24-06-2017
24.	582/15	Inder Singh	E.E. HPPWD, Dharampur	24-06-2017

25.	186/16	Mehar Chand	E.E. HPPWD, Dharampur	24-06-2017
26.	188/16	Rajinder Pal	E.E. HPPWD, Dharampur	24-06-2017
27.	187/16	Lek Raj	E.E. HPPWD, Dharampur	24-06-2017
28.	471/15	Balo Devi	E.E. HPPWD, Dharampur	24-06-2017
29.	46/16	Mohammad Khan	E.E. HPPWD, Dharampur	24-06-2017
30.	590/15	Mahinder Singh	E.E. HPPWD, Dharampur	24-06-2017
31.	470/15	Lekh Raj	E.E. HPPWD, Dharampur	24-06-2017
32.	472/15	Prem Singh	E.E. HPPWD, Dharampur	24-06-2017
33.	482/15	Sanjeev Kumar	E.E. HPPWD, Dharampur	24-06-2017
34.	319/15	Deepi Devi	E.E. HPPWD, Dharampur	24-06-2017
35.	112/15	Kashmir Singh	E.E. HPPWD, Dharampur	24-06-2017

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 409/2015
Date of Institution : 10.09.2015
Date of decision : 24.06.2017

Shri Ramesh Kumar S/O Shri Guman Chand, R/O Village Guwari, P.O. Tarella, Tehsil Churah, District Chamba, H.P. *.Petitioner.*

Versus

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

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

For the Petitioner: Sh. Dharam Malhotra, Adv. For the Respondent: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Ramesh Kumar S/O Shri Guman Chand, R/O Village Guwari, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 05.05.2011 regarding his alleged illegal termination of service during May, 2004 suffers from delay and latches? If not, Whether termination of the services of Ramesh Kumar S/O Shri Guman Chand, R/O Village Guwari, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during May, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. Facts germane for the disposal of the present reference are thus that claimant/petitioner was engaged as daily waged beldar in the month of August, 2001 at HPPWD Sub Division Shor, Division Killar Tehsil Pangi by the respondent where he worked continuously till the year 2004 when his services were disengaged. It further transpires from the claim petition that petitioner requested respondent several times to reengage him but respondent despite availability of work and funds did reengage the petitioner. It is further alleged that respondent had engaged several persons junior to petitioner in the year 2005 to 2010 and thus respondent had completely ignored the mandate of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is further alleged that in the 1st week of October, 2010 respondent finally refused to reengage the services of petitioner when demand notice was issued in May, 2011 and after conciliation, the appropriate government had declined to make reference as the petitioner had approached the authorities after about six years where after petitioner had filed CWP No.2909/2015 in the Hon'ble High Court of H.P. and *vide* judgment dated 1.7.2015 Labour Commissioner was directed to refer to dispute to this court within a period of six week holding that dispute raised in this writ petition stood already determined. The grievance of petitioner remains that the respondent had not served any notice under Section 25-F of the Industrial Disputes Act while disengaging petitioner from services and at the same time salary in lieu of notice period was also not given. It is alleged that petitioner had completed respective post of beldar for more than 160 days continuously preceding 12 calendar months in the tribal area of Pangi and break if any occurred due to stormy weather condition and as such the petitioner was entitled to be reinstated. Thus, petitioner seeks relief of reengagement as well as regularization and all other consequential service benefits.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that petitioner was engaged as daily waged beldar in 2001 who worked intermittently upto 2004 and left the job at its own sweet will and came at work with his own convenience. It has been emphatically denied that petitioner had completed 160 days of each calendar year as required for the tribal area of Pangi Tehsil as is evident from the mandays chart. Thus, respondent denying to have engaged juniors as contended petitioner is alleged to have not complete even a period of 160 days in preceding one year from the date of his disengagement and for the aforesaid reasons, petitioner is not entitled to relief under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri D. R. Chauhan, Executive Engineer as (RW1) tendered/proved his affidavit (RW1/A) and (RW1/B) copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 16.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 05-05-2011 qua his termination of service during May , 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?** . .*OPP.*
2. **Whether termination of the services of petitioner by the respondent w.e.f. May, 2004 is/was illegal and unjustified as alleged?** . .*OPP.*
3. **If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to?** . .*OPP.*
4. **Whether the claim petition is not maintainable in the present form as alleged?** . .*OPR.*

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

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

11. At the very outset, there is no denial to the factum that the relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2001 who continuously worked till 2004 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and

conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. In petitioner's evidence, stepping into witness box as (PW1) has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2001 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge- sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 55 days in the year 2001, 176 days in 2002, 84 days in 2003 and 43 days in 2004 and thus a total of his service in 2001 to 2004 in 04 years he had worked for 358 days in his entire service period. Be it noticed that except the years 2001, 2003 and 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2004 the petitioner had merely worked for 43 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after May, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam. 1996 (5) SCC 418 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in May, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld.

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

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

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

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

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

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

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

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

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

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

19. Furthermore, Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 90 3 Hon'ble High Court of H.P. Bhatag Ram's case in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of

the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

21. Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in **2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 4 years and actually worked for 358 days as per mandays chart on record and that the services of petitioner were disengaged in May, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7 years i.e. demand notice was given on 05.05.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 32 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (9) SCR 91**. The judgments relied upon by Id. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as

Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in **2016 (1) SCC 521**

22. For the foregoing reasons, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

24. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No.	: 422/2015
Date of Institution	: 10.09.2015
Date of decision	: 24.06.2017

Shri Karam Chand s/o Shri Shiv Dayal, r/o Village Suilla, P.O. Tarella, Tehsil Churah,
District Chamba, H.P. *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. .Respondent.

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

For the Petitioner: Sh. Dharam Malhotra, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Karam Chand S/O Shri Shiv Dayal, R/O Village Suilla, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 05.05.2011 regarding his alleged illegal termination of services during May, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Karam Chand S/O Shri Shiv Dayal, R/O Village Suilla, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during May, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. Facts germane for the disposal of the present reference are thus that claimant/petitioner was engaged as daily waged beldar in the month of August, 2001 at HPPWD Sub Division Shor, Division Killar Tehsil Pangi by the respondent where he worked continuously till the year 2004 when his services were disengaged. It further transpires from the claim petition that petitioner requested respondent several times to reengage him but respondent despite availability of work and funds did reengage the petitioner. It is further alleged that respondent had engaged several persons junior to petitioner in the year 2005 to 2010 and thus respondent had completely ignored the mandate of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is further alleged that in the 1st week of October, 2010 respondent finally refused to reengage the services of petitioner when demand notice was issued in May, 2011 and after conciliation, the appropriate government had declined to make reference as the petitioner had approached the authorities after about six years where after petitioner had filed CWP No.2970/2015 in the Hon’ble High Court of H.P. and vide judgment dated 2.7.2015 Labour Commissioner was directed to refer to dispute to this court within a period of six week holding that dispute raised in this writ petition stood already determined. The grievance of petitioner remains that the respondent had not served any notice under Section 25-F of the Industrial Disputes Act while disengaging petitioner from services and at the same time salary in lieu of notice period was also not given. It is alleged that petitioner had completed respective post of beldar for more than 160 days continuously preceding 12 calendar months in the tribal area of Pangi and break if

any occurred due to stormy weather condition and as such the petitioner was entitled to be reinstated. Thus, petitioner seeks relief of reengagement as well as regularization and all other consequential service benefits.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that petitioner was engaged as daily waged beldar in 2001 who worked intermittently upto 2004 and left the job at its own sweet will and came at work with his own convenience. It has been emphatically denied that petitioner had completed 160 days of each calendar year as required for the tribal area of Pangi Tehsil as is evident from the mandays chart. Thus, respondent denying to have engaged juniors as contended petitioner is alleged to have not complete even a period of 160 days in preceding one year from the date of his disengagement and for the aforesaid reasons, petitioner is not entitled to relief under Sections 25-F, 25- G and 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri D. R. Chauhan, Executive Engineer as (RW1) tendered/proved his affidavit (RW1/A) and (RW1/B) copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 16.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner *vide* demand notice dated 05-05-2011 qua his termination of service during May, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of the services of petitioner by the respondent *w.e.f.* May, 2004 is/was illegal and unjustified as alleged? . . .OPP.**
3. **If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

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

11. At the very outset, there is no denial to the factum that the relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2001 who continuously worked till 2004 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. In petitioner's evidence, stepping into witness box as (PW1) has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2001 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 27 days in the year 2001, 173 days in 2002, 69 days in 2003 and 64 days in 2004 and thus a total of his service in 2001 to 2004 in 04 years he had worked for 333 days in his entire service period. Be it noticed that except the years 2001, 2003 and 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2004 the petitioner had merely worked for 64 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after May, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 418** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of

judgment of Hon'ble Apex Court reported in 2015 (4)SCC 544 titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in 2014 (10) SCC 301 and the relevant paras of the judgment are produced below for reference:

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

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

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

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

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

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

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

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

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

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

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

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91**, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

21. Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in **2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 4 years and actually worked for 333 days as per mandays chart on record and that the services of petitioner were disengaged in May, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7 years i.e. demand notice was given

on 05.05.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 33 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (9) SCR 91**. The judgments relied upon by ld. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **2016 (1) SCC 521**

22. For the foregoing reasons, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO. 4

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

RELIEF

24. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 413/2015
Date of Institution : 10.09.2015
Date of decision : 24.06.2017

Shri Puran Chand s/o Shri Harkha Ram, r/o Village Chanogu, P.O. Tarella, Tehsil Churah,
District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangl, District
Chamba, H.P. . *Respondent.*

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

For the Petitioner: Sh. Dharam Malhotra, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Puran Chand S/O Shri Harkha, R/O Village Chanogu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangl, District Chamba, H.P. vide demand notice dated 05.05.2011 regarding his alleged illegal termination of service during September, 2003 suffers from delay and latches? If not, Whether termination of the services of Shri Puran Chand S/O Shri Harkha, R/O Village Chanogu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangl, District Chamba, H.P. during September, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. Facts germane for the disposal of the present reference are thus that claimant/petitioner was engaged as daily waged beldar in the month of August, 2001 at HPPWD Sub Division Shor, Division Killar Tehsil Pangl by the respondent where he worked continuously till the month of September, 2003 when his services were disengaged. It further transpires from the claim petition that petitioner requested respondent several times to reengage him but respondent despite availability of work and funds did reengage the petitioner. It is further alleged that respondent had engaged several persons junior to petitioner in the year 2005 to 2010 and thus respondent had completely ignored the mandate of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is further alleged that in the 1st week of October, 2010 respondent finally refused

to reengage the services of petitioner when demand notice was issued in May, 2011 and after conciliation, the appropriate government had declined to make reference as the petitioner had approached the authorities after about six years where after petitioner had filed CWP No.2918/2015 in the Hon'ble High Court of H.P. and vide judgment dated 2.7.2015 Labour Commissioner was directed to refer to dispute to this court within a period of six week holding that dispute raised in this writ petition stood already determined. The grievance of petitioner remains that the respondent had not served any notice under Section 25-F of the Industrial Disputes Act while disengaging petitioner from services and at the same time salary in lieu of notice period was also not given. It is alleged that petitioner had completed respective post of beldar for more than 160 days continuously preceding 12 calendar months in the tribal area of Pangi and break if any occurred due to stormy weather condition and as such the petitioner was entitled to be reinstated. Thus, petitioner seeks relief of reengagement as well as regularization and all other consequential service benefits.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that petitioner was engaged as daily waged beldar in 2001 who worked intermittently upto 2003 and left the job at its own sweet will and came at work with his own convenience. It has been emphatically denied that petitioner had completed 160 days of each calendar year as required for the tribal area of Pangi Tehsil as is evident from the mandays chart. Thus, respondent denying to have engaged juniors as contended petitioner is alleged to have not complete even a period of 160 days in preceding one year from the date of his disengagement and for the aforesaid reasons, petitioner is not entitled to relief under Sections 25-F, 25- G and 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri D.R.Chauhan, Executive Engineer as (RW1) tendered/proved his affidavit (RW1/A) and (RW1/B) copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 16.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 05-05-2011 qua his termination of service during September, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?**
..OPP.
2. **Whether termination of the services of petitioner by the respondent w.e.f. September, 2003 is/was illegal and unjustified as alleged?**
..OPP.
3. **If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to?**
..OPP.
4. **Whether the claim petition is not maintainable in the present form as alleged?**
..OPR.

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of the Award.

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

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

11. At the very outset, there is no denial to the factum that the relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2001 who continuously worked till 2003 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. In petitioner's evidence, stepping into witness box as (PW1) has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2001 to 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained

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

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 76 days in the year 2001, 138 days in 2002, and 83 days in 2003 and thus a total of his service in 2001 to 2003 in 03 years he had worked for 297 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2003 the petitioner had merely worked for 83 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 418** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers As stated above that petitioner

remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in 2015 (4)SCC 544 titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of

Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

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

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

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

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

spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

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

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

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

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

19. Furthermore, Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 90 3 Hon'ble High Court of H.P. Bhatag Ram 's case in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

21. Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the

Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 297 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 8 years i.e. demand notice was given on 05.05.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 46 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (9) SCR 91**. The judgments relied upon by Id. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **2016 (1) SCC 521**

22. For the foregoing reasons, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

24. As a sequitor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 392/2015
Date of Institution : 07.09.2015
Date of decision : 24.06.2017

Shri Rasalu @ Risalu s/o Shri Ganpat, r/o Village Chanegu, P.O. Tarella, Tehsil Churah,
District Chamba, H.P. . *Petitioner.*

Versus

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

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

For the Petitioner: Sh. Dharam Malhotra, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Rasalu @ Risalu S/o Shri Ganpat, R/O Village Chanegu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 05.05.2011 regarding his alleged illegal termination of service w.e.f. 01.10.2004 suffers from delay and latches? If not, Whether termination of the services of Shri Rasalu @ Risalu S/o Shri Ganpat, R/O Village Chanegu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before

the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. 01.10.2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. Facts germane for the disposal of the present reference are thus that claimant/petitioner was engaged as daily waged beldar in the month of August, 2001 at HPPWD Sub Division Shor, Division Killar Tehsil Pangi by the respondent where he worked continuously till the month of October, 2004 when his services were disengaged. It further transpires from the claim petition that petitioner requested respondent several times to reengage him but respondent despite availability of work and funds did reengage the petitioner. It is further alleged that respondent had engaged several persons junior to petitioner in the year 2005 to 2010 and thus respondent had completely ignored the mandate of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is further alleged that in the 1st week of October, 2010 respondent finally refused to reengage the services of petitioner when demand notice was issued in May, 2011 and after conciliation, the appropriate government had declined to make reference as the petitioner had approached the authorities after about six years where after petitioner had filed CWP No.2908/2015 in the Hon'ble High Court of H.P. and vide judgment dated 1.7.2015 Labour Commissioner was directed to refer to dispute to this court within a period of six week holding that dispute raised in this writ petition stood already determined. The grievance of petitioner remains that the respondent had not served any notice under Section 25-F of the Industrial Disputes Act while disengaging petitioner from services and at the same time salary in lieu of notice period was also not given. It is alleged that petitioner had completed respective post of beldar for more than 160 days continuously preceding 12 calendar months in the tribal area of Pangi and break if any occurred due to stormy weather condition and as such the petitioner was entitled to be reinstated. Thus, petitioner seeks relief of reengagement as well as regularization and all other consequential service benefits.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that petitioner was engaged as daily waged beldar in 2001 who worked intermittently upto 2004 and left the job at its own sweet will and came at work with his own convenience. It has been emphatically denied that petitioner had completed 160 days of each calendar year as required for the tribal area of Pangi Tehsil as is evident from the mandays chart. Thus, respondent denying to have engaged juniors as contended petitioner is alleged to have not complete even a period of 160 days in preceding one year from the date of his disengagement and for the aforesaid reasons, petitioner is not entitled to relief under Sections 25-F, 25- G and 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri D. R. Chauhan, Executive Engineer as (RW1) tendered/proved his affidavit (RW1/A) and (RW1/B) copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 16.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 05-05-2011 qua his termination of service w.e.f. 01-10-2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 01-10-2004 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

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

11. At the very outset, there is no denial to the factum that the relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2001 who continuously worked till 2004 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. In petitioner's evidence, stepping into witness box as (PW1) has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2001 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 153 days in the year 2001, 131 days in 2002 and 68 days in 2004 and thus a total of his service in 2001 to 2004 in 04 years he had worked for 352 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2004 the petitioner had merely worked for 68 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 418** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **2015 (4) SCC 544** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

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

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

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

"17. It was submitted on behalf of- the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and

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

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

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

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

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

19. Furthermore, Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 90 3 Hon'ble High Court of H.P. Bhatag Ram's case in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

21. Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in **2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 352 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7 years i.e. demand notice was given on 05.05.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 46 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (9) SCR 91**. The judgments relied upon by Id. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **2016 (1) SCC 521**

22. For the foregoing reasons, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

24. As a sequitor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 414/2015

Date of Institution : 10.09.2015

Date of decision : 24.06.2017

Shri Paras Ram s/o Shri Harkha, R/O Village Banegi, P.O. Tarella, Tehsil Churah, District Chamba, H.P. . *Petitioner.*

Versus

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

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

For the Petitioner: Sh. Dharam Malhotra, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Paras Ram S/O Shri Harkha, R/O Village Banegi, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 05.05.2011 regarding his alleged illegal termination of service during September, 2003 suffers from delay and latches? If not, Whether termination of the services of Shri Paras Ram S/O Shri Harkha, R/O Village Banegi, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during September, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. Facts germane for the disposal of the present reference are thus that claimant/petitioner was engaged as daily waged beldar in the month of August, 2001 at HPPWD Sub Division Shor, Division Killar Tehsil Pangi by the respondent where he worked continuously till the month of September, 2003 when his services were disengaged. It further transpires from the claim petition that petitioner requested respondent several times to reengage him but respondent despite availability of work and funds did reengage the petitioner. It is further alleged that respondent had engaged several persons junior to petitioner in the year 2005 to 2010 and thus respondent had completely ignored the mandate of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is further alleged that in the 1st week of October, 2010 respondent finally refused to reengage the services of petitioner when demand notice was issued in May, 2011 and after conciliation, the appropriate government had declined to make reference as the petitioner had approached the authorities after about six years where after petitioner had filed CWP No.2969/2015 in the Hon'ble High Court of H.P. and vide judgment dated 2.7.2015 Labour Commissioner was directed to refer to dispute to this court within a period of six week holding that dispute raised in this writ petition stood already determined. The grievance of petitioner remains that the respondent had not served any notice under Section 25-F of the Industrial Disputes Act while disengaging petitioner from services and at the same time salary in lieu of notice period was also not given. It is alleged that petitioner had completed respective post of beldar for more than 160 days continuously preceding 12 calendar months in the tribal area of Pangi and break if any occurred due to stormy weather condition and as such the petitioner was entitled to be reinstated. Thus, petitioner seeks relief of reengagement as well as regularization and all other consequential service benefits.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that petitioner was engaged as daily waged beldar in 2001 who worked intermittently upto 2003 and left the job at its own sweet will and came at work with his own convenience. It has been emphatically denied that petitioner had completed 160 days of each calendar year as required for the tribal area of Pangi Tehsil as is evident from the mandays chart. Thus, respondent denying to have engaged juniors as contended petitioner is alleged to have not complete even a period of 160 days in preceding one year from the date of his disengagement and for the aforesaid reasons, petitioner is not entitled to relief under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri D.R.Chauhan, Executive Engineer as (RW1) tendered/proved his affidavit (RW1/A) and (RW1/B) copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 16.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 05-05-2011 qua his termination of service during September, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?** **..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. September, 2003 is/was illegal and unjustified as alleged?** **..OPP.**
3. **If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged?** **..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

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

11. At the very outset, there is no denial to the factum that the relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2001 who continuously worked till September, 2003 with the respondent/department is not

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

12. In petitioner's evidence, stepping into witness box as (PW1) has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2001 to 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 77 days in the year 2001, 162 days in 2002

and 97 days in 2003 and thus a total of his service in 2001 to 2003 in 03 years he had worked for 336 days in his entire service period. Be it noticed that except the years 2001 and 2003 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2003 the petitioner had merely worked for 83 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 418** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross- examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **2015 (4)SCC 544** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September 2003, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

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

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

the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

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

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

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

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

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of

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

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

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

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did

not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

21. Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 336 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 8 years i.e. demand notice was given on 05.05.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 40 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (9) SCR 91. The judgments relied upon by Id. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in 2016 (1) SCC 521

22. For the foregoing reasons, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

24. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No.	: 412/2015
Date of Institution	: 10.09.2015
Date of decision	: 24.06.2017

Shri Kuldeep s/o Shri Dhian Singh, r/o Village Chanogu, P.O. Tarell, Tehsil Churah,
District Chamba, H.P. *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. .Respondent.

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

For the Petitioner: Sh. Dharam Malhotra, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Kuldeep S/O Shri Dhian Singh, R/O Village Chanogu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 28.06.2011 regarding his alleged illegal termination of services during July, 2003 suffers from delay and latches? If not, Whether termination of the services of Shri Kuldeep S/O Shri Dhian Singh, R/O Village Chanogu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during July, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. Facts germane for the disposal of the present reference are thus that claimant/petitioner was engaged as daily waged beldar in the month of January, 2002 at HPPWD Sub Division Shor, Division Killar Tehsil Pangi by the respondent where he worked continuously till 31st July, 2003 when his services were disengaged. It further transpires from the claim petition that petitioner requested respondent several times to reengage him but respondent despite availability of work and funds did reengage the petitioner. It is further alleged that respondent had engaged several persons junior to petitioner in the year 2005 to 2010 and thus respondent had completely ignored the mandate of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is further alleged that in the 1st week of October, 2010 respondent finally refused to reengage the services of petitioner when demand notice was issued in June, 2011 and after conciliation, the appropriate government had declined to make reference as the petitioner had approached the authorities after about six years where after petitioner had filed CWP No.3043/2015 in the Hon’ble High Court of H.P. and vide judgment dated 8.7.2015 Labour Commissioner was directed to refer to dispute to this court within a period of six week holding that dispute raised in this writ petition stood already determined. The grievance of petitioner remains that the respondent had not served any notice under Section 25-F of the Industrial Disputes Act while disengaging petitioner from services and at the same time salary in lieu of notice period was also not given. It is alleged that petitioner had completed respective post of beldar for more than 160 days continuously preceding 12 calendar months in the tribal area of Pangi and break if any occurred due to stormy weather condition and as such the petitioner was entitled to be reinstated. Thus, petitioner seeks relief of reengagement as well as regularization and all other consequential service benefits.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that petitioner was engaged as daily waged beldar in 2003 who worked intermittently upto 2003 and left the job at its own sweet will and came at work with his own convenience. It has been emphatically denied that petitioner had completed 160 days of each calendar year as required for the tribal area of Pangti Tehsil as is evident from the mandays chart. Thus, respondent denying to have engaged juniors as contended petitioner is alleged to have not complete even a period of 160 days in preceding one year from the date of his disengagement and for the aforesaid reasons, petitioner is not entitled to relief under Sections 25-F, 25- G and 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri D. R. Chauhan, Executive Engineer as (RW1) tendered/proved his affidavit (RW1/A) and (RW1/B) copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 16.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 28-6-2011 qua his termination of service during July, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of the services of petitioner by the respondent *w.e.f.* July, 2003 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

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

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

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

12. In petitioner's evidence, stepping into witness box as (PW1) has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from May, 2003 to July, 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart (RW1/B) any notice or letter was ever issued. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental

proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as (PW1) in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangri Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 86 days in the year 2003 and thus a total of his service in 2003 in three months he had worked for 86 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2003 the petitioner had merely worked for 86 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 418 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-

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

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra,

wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

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

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

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

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

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground

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

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

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

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

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91**, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

21. Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in **2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about three months year and actually worked for 86 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 8 years i.e. demand notice was given on 28.6.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex

Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (9) SCR 91**. The judgments relied upon by ld. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **2016 (1) SCC 521**

22. For the foregoing reasons, a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

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

25. The reference is answered in the aforesaid terms.

26. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 391/2015

Date of Institution : 07.09.2015

Date of decision : 24.06.2017

Shri Inder Singh s/o Shri Man Singh, r/o Village Chanegu, P.O. Tarell, Tehsil Churah,
District Chamba, H.P. . *Petitioner.*

Versus

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

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

For the Petitioner: Sh. Dharam Malhotra, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Inder Singh S/O Shri Man Singh, R/O Village Chanegu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 05.05.2011 regarding his alleged illegal termination of services w.e.f.01.10.2004 suffers from delay and latches? If not, Whether termination of the services of Shri Inder Singh S/O Shri Man Singh, R/O Village Chanegu, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. 01.10.2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. Facts germane for the disposal of the present reference are thus that claimant/petitioner was engaged as daily waged beldar in the month of August, 2001 at HPPWD Sub Division Shor, Division Killar Tehsil Pangi by the respondent where he worked continuously till 01.10.2004 when his services were disengaged. It further transpires from the claim petition that petitioner requested respondent several times to reengage him but respondent despite availability of work and funds did reengage the petitioner. It is further alleged that respondent had engaged several persons junior to petitioner in the year 2005 to 2010 and thus respondent had completely ignored the mandate of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is

further alleged that in the 1st week of October, 2010 respondent finally refused to reengage the services of petitioner when demand notice was issued in May, 2011 and after conciliation, the appropriate government had declined to make reference as the petitioner had approached the authorities after about six years where after petitioner had filed CWP No.2970/2015 in the Hon'ble High Court of H.P. and vide judgment dated 2.7.2015 Labour Commissioner was directed to refer to dispute to this court within a period of six week holding that dispute raised in this writ petition stood already determined. The grievance of petitioner remains that the respondent had not served any notice under Section 25-F of the Industrial Disputes Act while disengaging petitioner from services and at the same time salary in lieu of notice period was also not given. It is alleged that petitioner had completed respective post of beldar for more than 160 days continuously preceding 12 calendar months in the tribal area of Pangi and break if any occurred due to stormy weather condition and as such the petitioner was entitled to be reinstated. Thus, petitioner seeks relief of reengagement as well as regularization and all other consequential service benefits.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that petitioner was engaged as daily waged beldar in 2002 who worked intermittently upto 2004 and left the job at its own sweet will and came at work with his own convenience. It has been emphatically denied that petitioner had completed 160 days of each calendar year as required for the tribal area of Pangi Tehsil as is evident from the mandays chart. Thus, respondent denying to have engaged juniors as contended petitioner is alleged to have not complete even a period of 160 days in preceding one year from the date of his disengagement and for the aforesaid reasons, petitioner is not entitled to relief under Sections 25-F, 25- G and 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri D. R. Chauhan, Executive Engineer as (RW1) tendered/proved his affidavit (RW1/A) and (RW1/B) copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 16.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 05-05-2011 qua his termination of service w.e.f.01.10.2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 01.10.2004 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of the Award.

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

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

11. At the very outset, there is no denial to the factum that the relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2001 who continuously worked till 2004 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. In petitioner's evidence, stepping into witness box as (PW1) has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2002 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge- sheet against him but even while

retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart (RW1/B) any notice or letter was ever issued. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 01.10.2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as (PW1) in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 171 days in the year 2002, 165 days in 2003 and 68 days in 2004 and thus a total of his service in 2002 to 2004 in 04 years he had worked for 404 days in his entire service period. Be it noticed that except the year 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2004 the petitioner had merely worked for 68 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 01.10.2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 418 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross- examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in 2015 (4)SCC 544 titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled *Raghubir Singh vs. General Manager, Haryana Roadways, Hissar* reported in 2014 (10) SCC 301 and the relevant paras of the judgment are produced below for reference:

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

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

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

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

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

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

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

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

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

19. Furthermore, Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 90 3 Hon'ble High Court of H.P. Bhatag Ram's case in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

21. Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the

Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 404 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7 years i.e. demand notice was given on 05.05.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 37 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (9) SCR 91. The judgments relied upon by Id. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in 2016 (1) SCC 521

22. For the foregoing reasons, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

24. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 486/2015

Date of Institution : 09.11.2015

Date of Decision : 24.6.2017

Shri Rajinder s/o Shri Nek Chand, r/o Village Kanwas, P.O. Sural, Tehsil Pangi, District
Chamba, H.P. . . *Petitioner.*

Versus

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

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

Petitioner : Sh. O.P. Bhardwaj, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker *Shri Rajinder S/O Shri Nek Chand, R/O Village Kanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P.* before the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 18.5.2012 regarding his alleged illegal termination of services during October, 2004 suffers from delay and latches? If no, Whether termination of the services of *Shri Rajinder S/O Shri Nek Chand, R/O Village Kanwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P.* by the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P.

during October, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. Facts germane for the disposal of the present reference are thus that the petitioner above named had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Tek Chand who appointed in 1999, Baldev in 2000, Trilok in 2002 and Hari Ram in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service w.e.f. month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1992 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by

stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangti Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC, Demand Notice (PW1/B), copy of reply to demand notice (PW1/C), copy of order (PW1/D) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner (RW1/B), (RW1/C) copy of orders/awards, (RW1/C1) to (RW1/C3) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 17.2.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 18.5.2012 qua his termination of service during October, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of services of the petitioner by the respondent during October, 2004 is/was improper and unjustified as alleged? ..OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

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

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

11. At the very outset, there is no denial to the factum that the relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 continuously worked till October, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. In petitioner's evidence, stepping into witness box as PW1 has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to October, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before

this Tribunal, as there existed no road between Chamba town to Pangri Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 84 days in the year 1992, 25 days in 1993, 131 days in 1995, 140 days in 1997, 112 days in 1998, 83 days in 1999, 144 days in 2000, 113 days in 2001, 151 days in 2002, 134 days in 2003 and 133 days in 2004 and thus a total of his service in 1992 to 2004 in 11 years he had worked for 1250 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2004 the petitioner had merely worked for 100 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 418** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross- examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in 2015 (4)SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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

18. Another submission, ld. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him.

On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

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

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

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

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

criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

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

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

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

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

19. Furthermore, Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 90 3 Hon'ble High Court of H.P. Bhatag Ram's case in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble

Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1250 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 8 years i.e. demand notice was given on 18.05.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 40 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (9) SCR 91**. The judgments relied upon by ld. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **2016 (1) SCC 521**

21. For the foregoing reasons, a lump-sum compensation of Rs.1,25,000/- (Rupees one lac twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court on this 24th day of June, 2017.

(RAJESH TOMAR),
Presiding Judge,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 515/2015

Date of Institution : 09.11.2015

Date of Decision : 24.6.2017

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

Versus

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

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

Petitioner : Sh. O. P. Bhardwaj, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker *Shri Ram Singh s/o Shri Chowdhery Ram, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P.* before the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 23.12.2011 regarding his alleged illegal termination of services during August, 2004 suffers from delay and latches? If no, Whether termination of the services of Shri Roop Singh S/O *Shri Ram Singh s/o Shri Chowdhery Ram, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P.* by the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. during August, 2004

without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. Facts germane for the disposal of the present reference are thus that the petitioner above named had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003, Mohan Lal in 1990 and Dev Raj in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2002 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till

2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2005 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC, Demand Notice (PW1/B) and (PW1/C) copy of order and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner (RW1/B), (RW1/C) copy of orders/awards, (RW1/C1) to (RW1/C5) and closed the evidence.

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

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

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 23.12.2011 qua his termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of services of the petitioner by the respondent during August, 2004 is/was improper and unjustified as alleged? . . .OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? .. OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

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

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

12. In petitioner's evidence, stepping into witness box as PW1 has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which

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

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 23 days in the year 1994, 180 days in 1995, 127.5 days in 1996, 146 days in 1997, 159 days in 1998, 105 days in 1999, 144 days in 2000, 103 days in 2001, 147 days in 2002, 88 days in 2003 and 56 days in 2004 and thus a total of his service in 1997 to 2005 in 11 years he had worked for 1278 ½ days in his entire service period. Be it noticed that except the years 1994 and 1996 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2004 the petitioner had merely worked for 56 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 01.10.2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 418** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross- examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in 2015 (4)SCC 544 titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

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

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

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

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

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

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

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

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

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

19. Furthermore, Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 90 3 Hon'ble High Court of H.P. Bhatag Ram's case in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble

Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1278 ½ days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7 years i.e. demand notice was given on 23.12.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 42 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (9) SCR 91. The judgments relied upon by Id. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in 2016 (1) SCC 521

21. For the foregoing reasons, a lump-sum compensation of Rs.1,25,000/- (Rupees one lac twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 514/2015

Date of Institution : 09.11.2015

Date of Decision : 24.6.2017

Shri Thakur Dass s/o Shri Kant, r/o Village Guwari, P.O. Kumar, Tehsil Pangi, District
Chamba, H.P. . . *Petitioner.*

Versus

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

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

Petitioner : Sh. O.P. Bhardwaj, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker *Shri Thakur Dass S/O Shri Kant, R/O Village Guwari, P.O. Kumar, Tehsil Pangi, District Chamba, H.P.* before the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 08.12.2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and latches? If no, Whether termination of the services of *Shri Thakur Dass S/O Shri Kant, R/O Village Guwari, P.O. Kumar, Tehsil Pangi, District Chamba, H.P.* by the Executive Engineer,

Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. Facts germane for the disposal of the present reference are thus that the petitioner above named had been initially engaged as daily wage beldar on muster roll basis in the year 1991 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003, Mohan Lal in 1990 and Dev Raj in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2002 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits

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

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit (PW1/A) under Order 18 Rule 4 CPC, Demand Notice (PW1/B), copy of reply to demand notice (PW1/C), copy of order (PW1/D) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner (RW1/B), (RW1/C) copy of orders/awards, (RW1/C1) to (RW1/C4) and closed the evidence.

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

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

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 08.12.2011 qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?** **..OPP.**
2. **Whether termination of services of the petitioner by the respondent during September, 2004 is/was improper and unjustified as alleged?** **..OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged?** **..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

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

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

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

12. In petitioner's evidence, stepping into witness box as PW1 has sworn in affidavit (PW1/A) reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge- sheet against him but

even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangri Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. Verily, an overall assessment, analysis and synthesis of the mandays chart (RW1/B) would reveal that petitioner had worked for 27 days in the year 1994, 60 days in 1996, 97 days in 1997, 108 days in 1998, 90 days in 1999, 92 days in 2000, 160 days in 2001, 115 days in 2002, 90 days in 2003 and 100 days in 2004 and thus a total of his service in 1994 to 2004 in 10 years he had worked for 939 days in his entire service period. Be it noticed that except the years 1994 2000 and 2002 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart (RW1/B) that in the year 2004 the petitioner had merely worked for 100 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 418** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and

25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Per contra, repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross- examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in 2015 (4)SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act. As such, even when petitioner is proved to have not worked for more than 160 days in preceding four years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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

18. Another submission, Id. Dy. D.A. for State has contended with all vehemence that there is an inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 (10) SCC 301** and the relevant paras of the judgment are produced below for reference:

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

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

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

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

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

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

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

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

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

19. Furthermore, Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 90 3 Hon'ble High Court of H.P. Bhatag Ram's case in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. On elucidation of the above mentioned judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal 2013 (9) SCR 91, the relevant para of the judgment are produced below for reference:

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992, i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.....”

Thus from a careful examination of the entire gamut of the case leading to the peculiar facts and circumstances vis-à-vis having gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 5 SCC 136 titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble

Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 939 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7 years i.e. demand notice was given on 08.12.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 55 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (9) SCR 91. The judgments relied upon by Id. counsel for the petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in 2016 (1) SCC 521

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

ISSUE NO.4

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

RELIEF

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 586/2015

Date of Institution : 19.12.2015

Date of Decision : 24.06.2017

Shri Krishan Dev s/o Shri Gian Chand, r/o Village and Post Office Koon, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.or the Respondent
: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Krishan Dev S/O Shri Gian Chand, R/O Village and Post Office Koon, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 19.10.2009 regarding his alleged illegal termination of services w.e.f. 08.7.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Krishan Dev S/O Shri Gian Chand, R/O Village and Post Office Koon, Tehsil Sarkaghat, District Mandi, H.P. by the

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. w.e.f. 08.7.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. The germane facts for the disposal of the reference are thus that the petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 1.12.1998 where he continued to work upto 7.7.2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent w.e.f. 8.7.2005. It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 19.10.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3930/2015 which had been decided on 28.09.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Ranjeet Singh vs. State of H.P. & Ors. reported in 2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner in the year 2005 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 02/1999 who intermittently worked upto 8.7.2005. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised

demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant, copy of seniority list (PW1/D), copy of letter dated 18.3.2015 (PW1/E), copy of notice dated 23.01.2004 (PW1/F) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B), copy of notice (RW1/C) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 27.2.2017 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 19.10.2009 qua his termination of service w.e.f. 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of services of the petitioner by the respondent w.e.f. 8.7.2005 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue no.1 or issue no. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? .. OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,75,000/- per operative part of award.

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

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the month of July, 2005 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of February, 1999 on muster roll basis as beldar who continued to work till 7.7.2005 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 290 days in the year 1999, 358 ½ days in 2000, 358 days in 2001, 348 days in 2002, 305 days in 2003 and 87 days in 2004. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2005, petitioner has factually worked for 305 days in 2003 and 87 days in 2004 aggregating to 392 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 1999 till July, 2005 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2005 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 16.6.2009 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding

compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 8.7.2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Cou rt of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 53 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 1746 days in six years when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 4 ½ years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 524/2016

Date of Institution : 23.08.2016

Date of Decision : 24.06.2017

Shri Ram Singh s/o Shri Hari Singh, r/o V.P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. . . .Petitioner.

Versus

Executive Engineer, Dharampur Division HPPWD Dharampur, District Mandi, H.P. . . .Respondent.

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

Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv. For the Respondent
: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Shri Ram Singh S/O Shri Hari Singh, R/O V.P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 01/10/1995 by the Executive Engineer Dharampur Division HPPWD Dharampur District Mandi, H.P.. who has worked as beldar on daily wages basis and has raised his industrial dispute after 14 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 299, 326 and 159 days during years 1999, 2000 and 2001 respectively and delay of 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits compensation the above ex-worker is entitled to from the above employer/management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 1.1.1999 where he continued to work upto the June, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 1999 to 2003, respondent/department had terminated the services of more than 200 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003 and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Ajay Kumar in 1.12.2003, Lekh Raj in 11/2004 and Satya Devi in 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Raineet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto June, 2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, copy of mandays chart of Shashi Kant (PW1/C), copy of seniority list (PW1/D), copy of letter dated 18.3.2015 (PW1/E) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 21.1.2017 for determination:

1. **Whether termination of services of the claimant/petitioner by the respondent w.e.f. 01.10.1995 is/was illegal and unjustified as alleged?** **..OPP.**
2. **If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
3. **Whether the claim petition is not maintainable in the present form as alleged?** **..OPR.**
4. **Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect?** **..OPR.**

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding compensation Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1,2 AND 4

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1999 on muster roll basis as beldar who continued to work till the year 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 299 days in the year 1999, 306 days in 2000 and 159 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 2001 petitioner has factually worked only for 306 days in the year 2000 and 159 days in 2001 aggregating to 465 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 1999 till 2001. Be it noticed that Ajay Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such an action or omission on the part of

respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Further more, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 23.2.2015 after about 14 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which

compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Id. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

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

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 46 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 764 days in three years however demand notice was issued after a period of 14 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 523/2016

Date of Institution : 23.08.2016

Date of Decision : 24.06.2017

Smt. Sheela Devi w/o Shri Roshan Lal, r/o Village Putli Falad, P.O. Tour Jhajar, Tehsil Sarkaghat, District Mandi, H.P. . .Petitioner.

Versus

Executive Engineer, Dharampur Division HPPWD Dharampur, District Mandi, H.P. . .Respondent.

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

Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Smt. Sheela Devi W/O Shri Roshan Lal, R/O Village Putli Falad, P.O. Tour Jhajar, Tehsil Sarkaghat, District Mandi, H.P. during 03/1999 by the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas she has raised the industrial dispute vide demand notice dated 23/02/2015 after lapse of 16 years. If not, keeping in view of working period of 29 and 70 days during years 1998 and 1999 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/management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. December, 1998 where she continued to work upto March, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 1999 to 2003, respondent/department had terminated the services of more than 200 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003 and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Ajay Kumar in 1.12.2003, Lekh Raj in 11/2004 and Satya Devi in 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover

Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Raineet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 3/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as (PW1) tendered/proved her affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, copy of mandays chart of Shashi Kant (PW1/C), copy of seniority list (PW1/D), copy of letter dated 18.3.2015 (PW1/E) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved her affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 21.1.2017 for determination:

1. **Whether termination of services of the claimant/petitioner by the respondent during 3/1999 and raised her industrial dispute vide demand notice dated 23.2.2015 is/was illegal and unjustified as alleged? . . .OPP.**
2. **If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
3. **Whether the claim petition is not maintainable in the present form? .. OPR.**
4. **Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .OPR.**

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

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

REASONS FOR FINDINGS**ISSUES NO.1,2 AND 4**

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year January, 1999 on muster roll basis as beldar who continued to work till the March, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 70 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in the year 1999 petitioner has factually worked only for 70 days in three months prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since January, 1999 till March, 1999. Be it noticed that Ajay Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 23.2.2015 after about 16 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as (PW1) has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination petitioner was not in government job and cross-examination of (PW1) reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery**

Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Aiyab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 50 years when her services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 70 days in two months in the year 1999 however demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances, a

lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

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

RELIEF

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

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 522/2016
Date of Institution : 23.08.2016
Date of Decision : 24.06.2017

Shri Arun Kumar s/o Shri Dharam Singh, r/o V.P.O. Tanihar, Tehsil Sarkaghat,
District Mandi, H.P. . .Petitioner.

Versus

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

. .Respondent.

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

Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Shri Arun Kumar, S/O Shri Dharam Singh, R/O V.P.O. Tanihar, Tehsil Sarkaghat, District Mandi, H.P. during 10/2001 by the Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute vide demand notice dated 21/02/2015 after lapse of 14 years. If not, keeping in view of working period of 204 and 212 days during years 2000 and 2001 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. June, 2000 where he continued to work upto October 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 1999 to 2003, respondent/department had terminated the services of more than 200 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003 and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar in 2.5.2008, Lekh Raj in 11/2004 and Satya Devi in 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 19.12.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial

Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.**, reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 6/2000 who intermittently worked upto October, 2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A), (PW1/B) copy of RTI information dated 13.11.2013, copy of mandays chart of Shashi Kant (PW1/C), copy of seniority list (PW1/D), copy of letter dated 18.3.2015 (PW1/E), copy of mandays chart (PW1/F) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 21.1.2017 for determination:

1. **Whether termination of services of the claimant/petitioner by the respondent during 10/2001 and raised his industrial dispute vide demand notice dated 21.2.2015 is/was illegal and unjustified as alleged? . . .OPP.**
2. **If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**

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

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? .. OPR.

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1,2 AND 4

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 2000 on muster roll basis as beldar who continued to work till the year 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 204 days in the year 2000 and 212 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 2001 petitioner has factually worked only for 204 days in the year 2000 and 212 days in 2001 aggregating to 416 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 2000 till 2001. Be it noticed that Pradeep Kumar, Lekh Raj & Satya Devi

had been appointed in 2008, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Further more, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 21.2.2015 after about 14 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated

in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra 2013 (5) SCC 136 has to be followed and applied.

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

Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 40 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 416 days in three years however demand notice was issued after a period of 14 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

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

RELIEF

21. As a sequitor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 527/2016

Date of Institution : 23.08.2016

Date of Decision : 24.06.2017

Smt. Chameli Devi w/o Shri Khiyali Ram, r/o Village Putli Falad, P.O. Tour, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

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

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

Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Smt. Chameli Devi W/O Shri Khiyali Ram, R/O Village Putli Falad, P.O. Tour Tehsil Sarkaghat, District Mandi, H.P. during 06/1999 by the Executive Engineer Dharampur Division HPPWD Dharampur District Mandi, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after 16 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 157 days during year 1999 and delay of 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/management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of January, 1999 where she continued to work upto June, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 1999 to 2003, respondent/department had terminated the services of more than 200 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003 and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Ajay Kumar in 1.12.2003, Lekh Raj in 11/2004 and Satya Devi in 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the

Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 6/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as (PW1) tendered/proved her affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, copy of mandays chart of Shashi Kant (PW1/C), copy of seniority list (PW1/D), copy of letter dated 18.3.2015 (PW1/E) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved her affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 21.1.2017 for determination:

1. **Whether termination of services of the claimant/petitioner by the respondent during 10/1999 is/was illegal and unjustified as alleged?** **..OPP.**
2. **If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**

3. **Whether the claim petition is not maintainable in the present form? .. OPR.**
4. **Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.**

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

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

REASONS FOR FINDINGS

ISSUES NO.1,2 AND 4

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year January, 1999 on muster roll basis as beldar who continued to work till the June, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 157 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in the year 1999 petitioner has factually worked only for 157 days in six months prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since January, 1999 till June, 1999. Be it noticed that Ajay Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not

given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 23.2.2015 after about 16 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as (PW1) has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after

her termination petitioner was not in government job and cross-examination of (PW1) reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra 2013 (5) SCC 136 has to be followed and applied.

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

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 36 years when her services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 157 days in six months in the year 1999 however demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.30,000/- (Rupees thirty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

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

RELIEF

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

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 520/2016
Date of Institution : 23.08.2016
Date of Decision : 24.06.2017

Smt. Kamla Devi w/o Shri Jagdish Chand, r/o Village Ludhiana, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. . . .Petitioner.

Versus

Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. . Respondent.

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

Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Smt. Kamla Devi W/O Shri Jagdish Chand, R/O Village Ludhiana, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. during 10/1999 by the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute vide demand notice dated 21/02/2015 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 of working period of 239 days during years 1999 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/management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of January, 1999 where she continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 1999 to 2003, respondent/department had terminated the services of more than 200 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003 and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Ajay Kumar in 1.12.2003, Lekh Raj in 11/2004 and Satya Devi in 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour

Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of Rajneet Singh vs. State of H.P. & Ors. reported in 2015 (145) FLR 722. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as (PW1) tendered/proved her affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, copy of mandays chart of Shashi Kant (PW1/C), copy of seniority list (PW1/D), copy of letter dated 18.3.2015 (PW1/E) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved her affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 21.1.2017 for determination:

1. **Whether termination of services of the claimant/petitioner by the respondent during 10/1999 and raised her industrial dispute vide demand notice dated 21.2.2015 is/was illegal and unjustified as alleged? . . .OPP.**

2. **If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
3. **Whether the claim petition is not maintainable in the present form?** **.. OPR.**
4. **Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect?** **..OPR.**

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1,2 AND 4

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year January, 1999 on muster roll basis as beldar who continued to work till the September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 239 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in the year 1999 petitioner has factually worked only for 53 days in nine months prior to termination. A bare glance at the mandays

chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since January, 1999 till September, 1999. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2008 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 21.2.2015 after about 16 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated

above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as (PW1) has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination petitioner was not in government job and cross-examination of (PW1) reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra 2013 (5) SCC 136 has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in LHLJ 2007 HP 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not

applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 46 years when her services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 239 days in nine months in the year 1999 however demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 521/2016

Date of Institution : 23.08.2016

Date of Decision : 24.06.2017

Smt. Kamli Devi w/o Shri Sant Ram, r/o Village Putli Falad, P.O. Tour Jhajar, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, Dharampur Division HPPWD Dharampur, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

dent: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Smt. Kamli Devi W/O Shri Sant Ram, R/O Village Putli Falad, P.O. Tour Jhajar, Tehsil Sarkaghat, District Mandi, H.P. during 03/1999 by the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute vide demand notice dated 23/2/2015 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 of working period of 29 and 66 days during years 1998 and 1999 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/management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. December, 1998 where she continued to work upto March, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from

between 1999 to 2003, respondent/department had terminated the services of more than 200 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003 and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Ajay Kumar in 1.12.2003, Lekh Raj in 11/2004 and Satya Devi in 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Raineet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wagger on 1/1999 who intermittently worked upto 2/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as (PW1) tendered/proved her affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, copy of mandays chart of Shashi Kant (PW1/C), copy of seniority list (PW1/D), copy of letter dated 18.3.2015 (PW1/E) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved her affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 21.1.2017 for determination:

1. **Whether termination of services of the claimant/petitioner by the respondent during 3/1999 and raised her industrial dispute *vide* demand notice dated 23.2.2015 is/was illegal and unjustified as alleged? ..OPP.**
2. **If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
3. **Whether the claim petition is not maintainable in the present form? .. OPR.**
4. **Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.**

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

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

REASONS FOR FINDINGS

ISSUES NO.1,2 AND 4

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year January, 1999 on muster roll basis as beldar who

continued to work till the February, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 53 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in the year 1999 petitioner has factually worked only for 53 days in two months prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since January, 1999 till February, 1999. Be it noticed that Ajay Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 23.2.2015 after about 16 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as (PW1) has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination petitioner was not in government job and cross-examination of (PW1) reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has

been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Cou rt of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 51 years when her services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 53 days in two months in the year 1999 however demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

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

RELIEF

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

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 33/2015

Date of Institution : 13.1.2015

Date of decision : 24.06.2017

Smt. Narvada Devi w/o Shri Chand Ram, r/o Village Lakneher, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. . *Respondent.*

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

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

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

A W A R D

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

“Whether time to time termination of the services of Smt. Narvada Devi, W/O Shri Chand Ram, R/O Village Lakneher, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. during November, 2002 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

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

3. Facts germane for the disposal of the present reference are thus that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis in the

year 2001 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 2001 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2008 and 10 years of continuous service on 31.12.2010 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. *w.e.f.* 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. The lis was resisted and contested by filing inter-alia reply taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, it is submitted that the services of petitioner was engaged by the respondent/department in the month of February 2003. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State

besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as (PW1) tendered/proved her affidavit (PW1/A) under Order 18 Rule 4 CPC, (PW1/B) copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, (PW1/C) copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen, copy of year-wise working days of daily wages beldar (PW2/A) and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (NH) Division Joginder Nagar as (RW1) tendered (RW1/A) notification dated 9th December, 2003, (RW1/B), copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, (RW1/C) mandays chart of petitioner, (RW1/D) year-wise working days of daily wage Beldar and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 02.5.2015 for determination:

1. **Whether time to time termination of the services of the petitioner by the respondent during the years November, 2002 to 31st August, 2007 is/was illegal and unjustified as alleged? ..OPP.**
2. **If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? ..OPP.**
3. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**
4. **Whether the claim petition is bad for non-joinder of the necessary parties as alleged? ..OPR.**
5. **Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? ..OPR.**

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

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

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

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

11. At the very outset, there is no denial to the factum that petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. February, 2003. It is the admitted case of petitioner that petitioner had worked since February, 2003 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. Most importantly, a bare glance on mandays chart (RW1/C) would reveal that in the year 2003 petitioner had worked for 160 days, 168 days in 2004, 163 days in 2005, 167.5 days in 2006, 231 days in 2007, 364.5 days in 2008, 361 days in 2009, 365 days in 2010, 365 days in 2011, 352 days in 2012, 365 days in 2013 and 359 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 (PW1/B) direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2003 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. The Id. AR for petitioner has relied upon the document (PW2/A) on record in which all the persons named above are shown to have joined in the years 2003 and 2004 whereas petitioner had joined in February, 2003. Since respondent had not disputed to have engaged petitioner in February, 2003, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along- with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although

respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. In petitioner's evidence, stepping into the witness box as (PW1), petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2003 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2003 to 2007 as stated in the affidavit. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2003 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2003 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of (RW1) that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, (RW1) has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2003 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of (RW1) as well as the document placed on record by the petitioner (PW2/A).

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Pradeep Kumar who joined in January, 2004 as per (PW2/A) has been regularized but he was not given any fictional break from 2004 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2003 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service except back wages particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only (PW1) has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order (RW1/D) shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

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

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

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As a sequitor to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2016.

(RAJESH TOMAR),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM -
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No.	: 468/2015
Date of Institution	: 29.10.2015
Date of decision	: 24.06.2017

Shri Tulsi Ram s/o Shri Reet Ram, r/o Village and Post Office Khuhan, Sub Tehsil Bali Chowki,
District Mandi, H.P. *Petitioner.*

Versus

The Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P. Respondent.

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

For the Petitioner : Sh. Chetan Sharma, Adv. For the Respondent
: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Tulsi Ram S/O Shri Reet Ram, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. vide demand notice dated 13.5.2010 regarding his alleged illegal termination of services w.e.f. 01.09.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Tulsi Ram S/O Shri Reet Ram, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. w.e.f. 01.09.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that the petitioner was engaged as daily waged forest worker in Sissu Beat, Range Office Keylong, Forest Division Lahaul w.e.f. 1.6.2002 where he worked upto 1.9.2005. The grievance of petitioner remains that his services had been terminated verbally by respondent on 1.9.2005 without assigning any reason and at the same time without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’). It is alleged that neither any notice nor compensation in lieu of notice period had been paid to petitioner by respondent department before terminating the services in violation of the provisions of Section 25-F of the Act. It is claimed that work and conduct of petitioner had always remained satisfactory and that petitioner had completed 160 days in each calendar year while working in Forest Division Lahaul. It further remains the grievance of petitioner that several other persons who were junior to petitioner namely Yaga Chand, Nand Lal, Rai Chand, Dechen Wangmo and Jayanti Devi whose services were not terminated and were still working with the respondent/department and that petitioner’s services were unlawfully terminated and while doing so, respondent had violated the provisions of Section 25-G of the Act as the doctrine of ‘Last come First go’ was not followed by respondent. It is alleged that petitioner was performing his duties properly diligently upto satisfaction of his superiors but respondent department arbitrarily removed him from service despite sufficiency of work. It is contended that respondent department used to given fictional breaks to the petitioner and the said fictional break was liable to be declared illegal as the same tantamount to unfair labour practice. It further remains the case of petitioner that after his termination, he had remained unemployed as till the date of filing of claim petition, he was not gainfully employed and thus petitioner is entitled to reinstatement and full salary from the date of his illegal termination till his reengagement. It is also alleged that as per policy of the State Govt.,

services of petitioner deserves to be regularized on the completion of eight years i.e. somewhere in the year 2012 as petitioner had rendered requisite period of service in tribal area of Lahaul. Accordingly petitioner prays for quashing impugned verbal termination order w.e.f. 1.9.2005 with further prayer for his reinstatement into service w.e.f. same date as aforesaid with all consequential services benefits besides he has also prayed for his regularization as per the policy of the State Govt.

4. The lis was resisted and contested on filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged on daily wages for seasonal work of forestation, development and conservation during year 2002. It is claimed that after completion of seasonal work and starting of winter season petitioner had himself left the place being resident of District Mandi and thereafter he did not turn up for job. It is also contended that petitioner has not been retrenched from job by respondent and therefore violation of any of provision of industrial disputes did not arise. It is also contended that petitioner was not entitled for legal protection envisaged under Section 25-B and 25-F of the Act. It is further contended that some persons namely Smt. Dechen Wangmo and Smt. Jayanti Devi had been appointed on compassionate ground on account of untimely deaths of their husbands. It is also denied that any fictional break was given to petitioner. Accordingly, denying all allegations qua violation of the provisions of the Act, the petition was sought to be dismissed.

5. The rejoinder has been filed while controverting, reiterated his stand as maintained in the claim petition. It is denied that he had abandoned the job of his own. It is alleged that stand taken by respondent also gets falsified from its reply as on the one hand respondent claimed that in forest department daily waged workmen are engaged to perform seasonal work only subject to availability of work and funds.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC and (PW2) Shri Ledh Ram, mandays chart of Yagiya Ram (PW1/B) & (PW1/C), reply to demand notice & detail of mandays chart (PW1/D) and (PW1/D1), information under RTI showing the names of junior (PW1/E) and (PW1/E1) and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jai Ram, Divisional Forest Officer, Lahaul Forest Division, Keylong, H.P. who proved himself as (RW1), tendered (RW1/B) is the copy of mandays chart of petitioner and closed evidence.

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

8. From the contentions raised, following issues were framed on by my ld. Predecessor on 22.9.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 13.5.2010 qua his termination w.e.f. 01.09.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?** **..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 1.9.2005 is/was illegal and unjustified as alleged?** **..OPP.**
3. **If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged?** **..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS**ISSUE NO.1**

10. Ld. Dy. D.A. for the State has contended that claim petition is bad on account of delay and laches. In support his contention he has referred the facts of the case that petitioner is shown to have left the job in 2005 although 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. On the other hand, Id. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief he has relied upon in *Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160*, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In *Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248*, there was a delay of 12 years. In *Ramesh Chand vs. Union of India, CWP No. 812 of 2000*, there was a delay of 9 years. In *CWP No. 95 of 2000* titled as *Divisional Manager vs. Mohinder Kumar*, there was a delay of 14 years. In *Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425*, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the *Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752*, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

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

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

11. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

ISSUES NO. 2 AND 3

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

13. At the very outset, there is no denial to the factum that the petitioner had been engaged as daily waged forest worker in the year 2005 without any written appointment letter by respondent and that petitioner worked in the Sissu Beat, Range Office Keylong Forest Division Lahaul. It also remains the case of petitioner that respondent department had verbally terminated his services vide order dated 1.9.2005 whereas the case of respondent, on the other hand remains that petitioner had abandoned the job of his own who did not turn as can be noticed in manner from which he worked as reflected in mandays chart (RW1/B). To appreciate to controversy in issue, it would be pertinent to refer to mandays chart which showed that petitioner when initially engaged in the month of June, 2002 had worked for 114 days in the year 2002, 104 days in 2003, 148 days in 2004 and 122 days in 2005. Similarly, in the year 2005 in the year 2005 he worked for 122 days only in preceding one calendar year petitioner has certainly not worked for 240 days or say 160 days as were required to be established by him who claimed to have worked in Lahaul area or District Lahaul & Spiti. It was specifically mentioned that eligibility for regularization of such workers in respect of tribal areas shall be on the basis of number of minimum requisite days i.e. in case District Lahaul and Spiti in area of Lahaul, the daily waged worker for regularization required 160 days only and 240 days in any calendar year were required for other areas. In the case in hand, petitioner has made futile attempt by claiming that fictional breaks had been given as petitioner was not given muster roll for 30 days every month he worked but there is no corresponding evidence which would show if fictional breaks were factually given to petitioner instead he was given muster roll according to work and funds available but on the other hand the period of 160 days is sufficient for him to claim protection having worked in tribal area of Lahaul envisaged under Section 25-F of the Act who shall be deemed to be in continuous service if succeeded in establishing to have worked for 160 days in a year.

14. In petitioner's evidence, stepping into witness box as (PW1) petitioner has sworn in detailed affidavit (PW1/A) under Order 18 Rule 4 CPC stipulating therein the manner he was engaged as daily waged forest worker and till when he continued to work he has in unequivocal terms stated that he had neither been given any notice envisaged under Section 25-F of the Act nor any compensation in lieu thereof notice has been paid to him and therefore the termination of the services of petitioner by respondent was manifestly illegal as the respondent had failed to adhere to the mandatory provisions of the Act. It is further alleged in the affidavit that work and conduct of petitioner remained satisfactory for the entire 160 days in a year with the respondent department and being employed remained posted in the hard/tribal area of Lahaul, District Lahaul and Spiti as the period of 160 days as per the notification of govt. as stated above for regularization per its policy. The version of petitioner has been corroborated by (PW2) Shri Jhanu Ram in the same manner as petitioner has stipulated in his

affidavit but in cross-examination this witness showed that he was from village of petitioner but nothing in cross-examination could be elicited which would establish that he deposed falsely in favour of petitioner. Significantly, (PW2) too worked with forest department whose services had been regularized. As such, there exists no discrepancy or any inconsistency in testimony of (PW2) and the same can be relied.

15. Verily, an overall assessment, analysis and synthesis that the plea of abandonment of work by petitioner as alleged by respondent is concerned, there is no iota of evidence on record which would show that the respondent had made any endeavour to call petitioner on job when he absented. It is nowhere in the respondent's evidence that any registered letter or notice was ever sent on the address available or that any charge sheet was raised. It has been rightly contended by ld. counsel for petitioner that abandonment is required to be proved like any other fact which has not been established by respondent in this case. Ld. counsel for petitioner has relied upon judgment of Hon'ble High Court of Punjab and Haryana reported in 2014 LLR 571 titled as Ved Parkash vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr., the relevant para of the judgment is given below:—

“Abandonment-employee was a part-time Electrician. He had been taken a contract for a Canteen in the premises of the Bank/employer. He could not attend duty regularly. He was neither given notice nor retrenchment compensation nor had been indicted in any departmental enquiry. He had completed continuous service for more than 240 days. His services were terminated. He raised an industrial dispute. Industrial Tribunal held the termination to be justified. In writ petition, the High Court observed that it is not proved on record by cogent evidence that the employee had abandoned the employment of his own. Hence, the termination as effected, is illegal”

16. On elucidation of the above mentioned judgment, services of the employee was held to be illegally terminated in view of the fact that no notice was given. At the same time while terminating the services of petitioner, notice as required under Section 25-F of the Act or compensation in lieu thereof notice was not given. By merely stating that petitioner had abandoned job, the plea of respondent could not be accepted as is in his affidavit, respondent as (RW-1) has maintained that due to abandonment of the job of petitioner he was not entitled for any legal protection but as noted above, there being no reliable evidence of abandonment or that any proceedings had been initiated by respondent to hold that petitioner had abandoned the job instead cross-examination of RW1 shows that as per the rules framed by government petitioner was claiming benefit for scheme of regularization of employees who had rendered continuous service of eight years. If we look at evidence of petitioner on the mandays chart it would not be erroneous to conclude that petitioner had worked for 122 days in the year 2005 prior to his termination the petitioner had worked for only 122 days and thus petitioner would not be entitled to protection envisaged under Section 25-F of the Act. In such like situation, it was not incumbent upon respondent to have followed procedure envisaged under Section 25-F of the Act.

17. Another important aspect highlighted by petitioner claiming his retrenchment to be illegal and unjustified is that petitioner has alleged that respondent while terminating his services had not followed the provisions of Section 25-G of the Act which requires adopting of principle of ‘Last come First go’. Reliance has been placed on the judgment of our own Hon'ble High Court reported in 2013 LLR 1206 titled as State of H.P. and another vs. Hardyal Singh while dealing with Section 25-G of the Act has held that in order to claim benefit envisaged under Section 25-G of the Act, the workman is not liable to prove continuous service of 240 days. Since the plea of management that workman had abandoned the job has not

been established and that no objections had been raised about validity of reference for adjudication, workman who had been retrenched but had not worked for 240 days in preceding year was entitled for the protection under Section 25-G. In the case before this court, the plea of petitioner remains that several persons junior to him were still continuing with respondent and that he having joined earlier to them has not been retained by the department while retrenching him.

18. Most importantly, it is evident from mandays chart (RW1/B) relating to the petitioner that he was appointed/engaged in June, 2002 whereas (PW1/B) relating to Rey Chand showed that he got employed in the year 2005. (PW1/C) is the reply to the demand notice, who is shown to have worked with respondent department till 2005 and was appointed in May, 2005. As such, Rey Chand is shown to have joined in the year 2005 who had worked for 365 days and was also continuing as on date. As such, the petitioner had rightly contended that principle of 'Last come First go' was not followed. From the evidence of petitioner as well as statement of RW1, it can be safely inferred that Rey Chand was junior to petitioner and was working with the respondent department when petitioner was retrenched. Significantly, (RW1) has also admitted that petitioner was not called to join duties after his termination. It has also come in the evidence of respondent that the persons mentioned in (PW1/D1) namely Prem Singh, Tar Dei, Raj Kumar, Jeet Ram etc. were junior to the petitioner as certainly there is evidence on record to show that persons junior to petitioner were still working with the respondent/department.

19. Furthermore, the falsity of respondent's case further gets surfaced from its own plea as the respondent had maintained that petitioner was engaged for seasonal forestry work whereas at the same time respondent had engaged Rey Chand vide its mandays chart on record is shown to have remained employed from 2005 to 2012 exceeding 300 days in each year he worked. That being so, work of respondent/department could not be stated to be seasonal work in any manner. As such, plea of respondent that petitioner was engaged only for seasonal work and abandoned the job of his own respondent could not be accepted as true plea. Accordingly, respondent is held to have violated the provisions of Section 25-G of the Act as has been held in judgment of our own Hon'ble High Court reported in 2013 (138) FLR 1051 titled as Paras Ram vs. Himachal Pradesh State Electricity Board Ltd., in which the Hon'ble High Court held that the junior workmen had been retained by the respondent retrenching petitioner/workman which is the violation of the provisions of Section 25-G of the Act.

20. Ld. Dy. D.A. for the State has also contended that petitioner is not entitled for any back wages as he was gainfully employed after being disengaged by respondent. In his claim petition as maintained that he has remained unemployed and not gainfully employed ever since his termination w.e.f. 1.9.2005 but in the witness box he has specifically admitted that he was gainfully employed and was earning from his agricultural pursuits. Since the plea of having been not gainfully employed gets belied from his inconsistent fact deposed in cross-examination, it would be unsafe to hold that petitioner was not gainfully employed. In the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324, the Hon'ble Apex Court has held that even earning from agricultural would be treated as gainful employment of workman and thus petitioner having remained gainfully employed, would not be entitled to back wages more so petitioner himself admits that he was earning his livelihood from agricultural activities. The petitioner thus shall be entitled for continuity in service and seniority. Issue in hand is accordingly answered in affirmative. Hence, issues no. 2 and 3 are answered accordingly.

ISSUE NO.4

21. Ld. Dy. D.A. has argued that claim petition since not maintainable. Perusal of the reply on record shows that neither any legal or fundamental rights of petitioner had ever been

infringed. As has come in the evidence on record that the services of petitioner had been illegally terminated vide verbal order, I see no force in the arguments of Ld. Dy. D.A. as vague plea of denial of infringement of fundamental rights has been raised but the petitioner redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondent.

RELIEF

22. As a sequitor, to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

23. The reference is answered accordingly.

24. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 466/2015
Date of Institution : 29.10.2015
Date of decision : 24.06.2017

Shri Hemant Kumar s/o Shri Munni Lal, r/o Village and Post Office Khuhan, Sub Tehsil Balichowki, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P. . *Respondent.*

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

For the Petitioner : Sh. Chetan Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Hemant Kumar S/O Shri Munni Lal, R/O Village and Post Office Khuhan, Sub Tehsil Balichowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. vide demand notice dated 21.5.2010 regarding his alleged illegal termination of services w.e.f. 01.09.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Hemant Kumar S/O Shri Munni Lal, R/O Village and Post Office Khuhan, Sub Tehsil Balichowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. w.e.f. 01.09.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that the petitioner was engaged as daily waged forest worker in Sissu Beat, Range Office Keylong, Forest Division Lahaul w.e.f. 2.5.2004 where he worked upto 1.9.2005. The grievance of petitioner remains that his services had been terminated verbally by respondent on 1.9.2005 without assigning any reason and at the same time without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’). It is alleged that neither any notice nor compensation in lieu of notice period had been paid to petitioner by respondent department before terminating the services in violation of the provisions of Section 25-F of the Act. It is claimed that work and conduct of petitioner had always remained satisfactory and that petitioner had completed 160 days in each calendar year while working in Forest Division Lahaul. It further remains the grievance of petitioner that several other persons who were junior to petitioner namely Yaga Chand, Nand Lal, Rai Chand, Dechen Wangmo and Jayanti Devi whose services were not terminated and were still working with the respondent/department and that petitioner’s services were unlawfully terminated and while doing so, respondent had violated the provisions of Section 25-G of the Act as the doctrine of ‘Last come First go’ was not followed by respondent. It is alleged that petitioner was performing his duties properly diligently upto satisfaction of his superiors but respondent department arbitrarily removed him from service despite sufficiency of work. It is contended that respondent department used to given fictional breaks to the petitioner and the said fictional break was liable to be declared illegal as the same tantamount to unfair labour practice. It further remains the case of petitioner that after his termination, he had remained unemployed as till the date of filing of claim petition, he was not gainfully employed and thus petitioner is entitled to reinstatement and full salary from the date of his illegal termination till his reengagement. It is also alleged that as per policy of the State Govt., services of petitioner deserves to be regularized on the completion of eight years i.e. somewhere in the year 2012 as petitioner had rendered requisite period of service in tribal area of Lahaul. Accordingly petitioner prays for quashing impugned verbal termination order w.e.f. 1.9.2005 with further prayer for his reinstatement into service w.e.f. same date as aforesaid with all consequential services benefits besides he has also prayed for his regularization as per the policy of the State Govt.

4. The lis was resisted and contested on filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged on daily wages for seasonal work of forestation, development and conservation during year 2005. It is claimed that after completion of seasonal work and starting of winter season petitioner had himself left the place being resident of District Mandi and thereafter he did not turn up for job. It is also contended that petitioner has not been retrenched from job by respondent and therefore violation of any of provision of industrial disputes did not arise. It is also contended that petitioner was not entitled for legal protection envisaged under Section 25-B and 25-F of the Act. It is further contended that some persons namely Smt. Dechen Wangmo and Smt. Jayanti Devi had been appointed on compassionate ground on account of untimely deaths of their husbands. It is also denied that any fictional break was given to petitioner. Accordingly, denying all allegations qua violation of the provisions of the Act, the petition was sought to be dismissed.

5. The rejoinder has been filed while controverting, reiterated his stand as maintained in the claim petition. It is denied that he had abandoned the job of his own. It is alleged that stand taken by respondent also gets falsified from its reply as on the one hand respondent claimed that in forest department daily waged workmen are engaged to perform seasonal work only subject to availability of work and funds.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC and (PW2) Shri Jhanu Ram, reply to demand notice & detail of mandays chart (PW1/C) and (PW1/C1), information under RTI showing the names of junior (PW1/D) and (PW1/D1) and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jai Ram, Divisional Forest Officer, Lahaul Forest Division, Keylong, H.P. who proved himself as (RW1), tendered (RW1/B) is the copy of mandays chart of petitioner and closed evidence.

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

8. From the contentions raised, following issues were framed on by my ld. Predecessor on 22.9.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 21.5.2010 qua his termination w.e.f. 01.09.2005 by respondent suffers from the vice of delay and latches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 1.9.2005 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS

ISSUE NO.1

10. Ld. Dy. D.A. for the State has contended that claim petition is bad on account of delay and laches. In support his contention he has referred the facts of the case that petitioner is shown to have left the job in 2005 although 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. On the other hand, Id. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief he has relied upon in **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160,** the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000,** there was a delay of 9 years. In **CWP No. 95 of 2000** titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425,** it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752,** has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82,** it has been observed by the Hon'ble Supreme Court that:

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

11. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the

petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

ISSUES NO. 2 AND 3

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

13. At the very outset, there is no denial to the factum that the petitioner had been engaged as daily waged forest worker in the year 2005 without any written appointment letter by respondent and that petitioner worked in the Sissu Beat, Range Office Keylong Forest Division Lahaul. It also remains the case of petitioner that respondent department had verbally terminated his services vide order dated 1.9.2005 whereas the case of respondent, on the other hand remains that petitioner had abandoned the job of his own who did not turn as can be noticed in manner from which he worked as reflected in mandays chart (RW1/B). To appreciate to controversy in issue, it would be pertinent to refer to mandays chart which showed that petitioner when initially engaged in the month of May, 2005 had worked for 30 days and subsequent in the month of June, 2005 he worked 30 days and in August, 2005, petitioner had worked for 31 days. As such, in the year 2005 petitioner had worked for 30 days in the month of May and in June 2005 he had worked for 30 days, in July petitioner worked for 31 days and in August 2005 he worked for 31 days aggregating to 122 days in the year 2005. Similarly, in the year 2005 in the month of May he worked for 31 days only in preceding one calendar year petitioner has certainly not worked for 240 days or say 160 days as were required to be established by him who claimed to have worked in Lahaul area or District Lahaul & Spiti. It was specifically mentioned that eligibility for regularization of such workers in respect of tribal areas shall be on the basis of number of minimum requisite days i.e. in case District Lahaul and Spiti in area of Lahaul, the daily waged worker for regularization required 160 days only and 240 days in any calendar year were required for other areas. In the case in hand, petitioner has made futile attempt by claiming that fictional breaks had been given as petitioner was not given muster roll for 30 days every month he worked but there is no corresponding evidence which would show if fictional breaks were factually given to petitioner instead he was given muster roll according to work and funds available but on the other hand the period of 160 days is sufficient for him to claim protection having worked in tribal area of Lahaul envisaged under Section 25-F of the Act who shall be deemed to be in continuous service if succeeded in establishing to have worked for 160 days in a year.

14. In petitioner's evidence, stepping into witness box as (PW1) petitioner has sworn in detailed affidavit (PW1/A) under Order 18 Rule 4 CPC stipulating therein the manner he was engaged as daily waged forest worker and till when he continued to work he has in unequivocal terms stated that he had neither been given any notice envisaged under Section 25-F of the Act nor any compensation in lieu thereof notice has been paid to him and therefore the termination of the services of petitioner by respondent was manifestly illegal as the respondent had failed to adhere to the mandatory provisions of the Act. It is further alleged in the affidavit that work and conduct of petitioner remained satisfactory for the entire 160 days in a year with the respondent department and being employed remained posted in the hard/tribal area of Lahaul, District Lahaul and Spiti as the period of 160 days as per the notification of govt. as stated above for regularization per its policy. The version of petitioner has been corroborated by (PW2) Shri Jhanu Ram in the same manner as petitioner has stipulated in his affidavit but in cross-examination this witness showed that he was from village of petitioner but nothing in cross-examination could be elicited which would establish that he deposed falsely in favour of petitioner. Significantly, (PW2) too worked with forest department whose services had been regularized. As such, there exists no discrepancy or any inconsistency in testimony of (PW2) and the same can be relied.

15. Verily, an overall assessment, analysis and synthesis that the plea of abandonment of work by petitioner as alleged by respondent is concerned, there is no iota of evidence on record which would show that the respondent had made any endeavour to call petitioner on job when he absented. It is nowhere in the respondent's evidence that any registered letter or notice was ever sent on the address available or that any charge sheet was raised. It has been rightly contended by ld. counsel for petitioner that abandonment is required to be proved like any other fact which has not been established by respondent in this case. Ld. counsel for petitioner has relied upon judgment of Hon'ble High Court of Punjab and Haryana reported in 2014 LLR 571 titled as Ved Parkash vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr., the relevant para of the judgment is given below:—

“Abandonment-employee was a part-time Electrician. He had been taken a contract for a Canteen in the premises of the Bank/employer. He could not attend duty regularly. He was neither given notice nor retrenchment compensation nor had been indicted in any departmental enquiry. He had completed continuous service for more than 240 days. His services were terminated. He raised an industrial dispute. Industrial Tribunal held the termination to be justified. In writ petition, the High Court observed that it is not proved on record by cogent evidence that the employee had abandoned the employment of his own. Hence, the termination as effected, is illegal”

16. On elucidation of the above mentioned judgment, services of the employee was held to be illegally terminated in view of the fact that no notice was given. At the same time while terminating the services of petitioner, notice as required under Section 25-F of the Act or compensation in lieu thereof notice was not given. By merely stating that petitioner had abandoned job, the plea of respondent could not be accepted as is in his affidavit, respondent as (RW-1) has maintained that due to abandonment of the job of petitioner he was not entitled for any legal protection but as noted above, there being no reliable evidence of abandonment or that any proceedings had been initiated by respondent to hold that petitioner had abandoned the job instead cross-examination of RW1 shows that as per the rules framed by government petitioner was claiming benefit for scheme of regularization of employees who had rendered continuous service of eight years. If we look at evidence of petitioner on the mandays chart it would not be erroneous to conclude that petitioner had worked for 122 days in the year 2005 prior to his termination the petitioner had worked for only 122 days and thus petitioner would not be entitled to protection envisaged under Section 25-F of the Act. In such like situation, it was not incumbent upon respondent to have followed procedure envisaged under Section 25-F of the Act.

17. Another important aspect highlighted by petitioner claiming his retrenchment to be illegal and unjustified is that petitioner has alleged that respondent while terminating his services had not followed the provisions of Section 25-G of the Act which requires adopting of principle of 'Last come First go'. Reliance has been placed on the judgment of our own Hon'ble High Court reported in 2013 LLR 1206 titled as State of H.P. and another vs. Hardyal Singh while dealing with Section 25-G of the Act has held that in order to claim benefit envisaged under Section 25-G of the Act, the workman is not liable to prove continuous service of 240 days. Since the plea of management that workman had abandoned the job has not been established and that no objections had been raised about validity of reference for adjudication, workman who had been retrenched but had not worked for 240 days in preceding year was entitled for the protection under Section 25-G. In the case before this court, the plea of petitioner remains that several persons junior to him were still continuing with respondent and that he having joined earlier to them has not been retained by the department while retrenching him.

18. Most importantly, it is evident from mandays chart (RW1/B) relating to Hemant Kumar (petitioner) that he was appointed/engaged in May, 2005 whereas (PW1/D) relating to Rey Chand showed that he got employed in the year 2005. (PW1/C) is the reply to the demand notice, who is shown to have worked with respondent department till 2005 and was appointed in May, 2005. As such, Rey Chand is shown to have joined in the year 2005 who had worked for 365 days and was also continuing as on date. As such, the petitioner had rightly contended that principle of 'Last come First go' was not followed. From the evidence of petitioner as well as statement of RW1, it can be safely inferred that Rey Chand was junior to petitioner and was working with the respondent department when petitioner was retrenched. Significantly, (RW1) has also admitted that petitioner was not called to join duties after his termination. It has also come in the evidence of respondent that the persons mentioned in (PW1/D1) namely Prem Singh, Tar Dei, Raj Kumar, Jeet Ram etc. were junior to the petitioner as certainly there is evidence on record to show that persons junior to petitioner were still working with the respondent/department.

19. Furthermore, the falsity of respondent's case further gets surfaced from its own plea as the respondent had maintained that petitioner was engaged for seasonal forestry work whereas at the same time respondent had engaged Rey Chand vide its mandays chart on record is shown to have remained employed from 2005 to 2012 exceeding 300 days in each year he worked. That being so, work of respondent/department could not be stated to be seasonal work in any manner. As such, plea of respondent that petitioner was engaged only for seasonal work and abandoned the job of his own respondent could not be accepted as true plea. Accordingly, respondent is held to have violated the provisions of Section 25-G of the Act as has been held in judgment of our own Hon'ble High Court reported in 2013 (138) FLR 1051 titled as Paras Ram vs. Himachal Pradesh State Electricity Board Ltd., in which the Hon'ble High Court held that the junior workmen had been retained by the respondent retrenching petitioner/workman which is the violation of the provisions of Section 25-G of the Act.

20. Ld. Dy. D.A. for the State has also contended that petitioner is not entitled for any back wages as he was gainfully employed after being disengaged by respondent. In his claim petition as maintained that he has remained unemployed and not gainfully employed ever since his termination w.e.f. 1.9.2005 but in the witness box he has specifically admitted that he was gainfully employed and was earning from his agricultural pursuits. Since the plea of having been not gainfully employed gets belied from his inconsistent fact deposed in cross-examination, it would be unsafe to hold that petitioner was not gainfully employed. In the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324, the Hon'ble Apex Court has held that even earning from agricultural would be treated as gainful employment of workman and thus petitioner having remained gainfully employed, would not be entitled to back wages more so petitioner himself admits that he was earning his livelihood from agricultural activities. The petitioner thus shall be entitled for continuity in service and seniority. Issue in hand is accordingly answered in affirmative. Hence, issues no. 2 and 3 are answered accordingly.

ISSUE NO.4

21. Ld. Dy. D.A. has argued that claim petition since not maintainable. Perusal of the reply on record shows that neither any legal or fundamental rights of petitioner had ever been infringed. As has come in the evidence on record that the services of petitioner had been illegally terminated vide verbal order, I see no force in the arguments of Ld. Dy. D.A. as vague plea of denial of infringement of fundamental rights has been raised but the petitioner redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondent.

RELIEF

22. As a sequittor, to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

23. The reference is answered accordingly.

24. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 466/2015

Date of Institution : 29.10.2015

Date of decision : 24.06.2017

Shri Hemant Kumar s/o Shri Munni Lal, r/o Village and Post Office Khuhan, Sub Tehsil Balichowki, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P. . *Respondent.*

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

For the Petitioner : Sh. Chetan Sharma, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Hemant Kumar S/O Shri Munni Lal, R/O Village and Post Office Khuhan, Sub Tehsil Balichowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. vide demand notice dated 21.5.2010 regarding his alleged illegal termination of services w.e.f. 01.09.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Hemant Kumar S/O Shri Munni Lal, R/O Village and Post Office Khuhan, Sub Tehsil Balichowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. w.e.f. 01.09.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that the petitioner was engaged as daily waged forest worker in Sissu Beat, Range Office Keylong, Forest Division Lahaul w.e.f. 2.5.2004 where he worked upto 1.9.2005. The grievance of petitioner remains that his services had been terminated verbally by respondent on 1.9.2005 without assigning any reason and at the same time without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’). It is alleged that neither any notice nor compensation in lieu of notice period had been paid to petitioner by respondent department before terminating the services in violation of the provisions of Section 25-F of the Act. It is claimed that work and conduct of petitioner had always remained satisfactory and that petitioner had completed 160 days in each calendar year while working in Forest Division Lahaul. It further remains the grievance of petitioner that several other persons who were junior to petitioner namely Yaga Chand, Nand Lal, Rai Chand, Dechen Wangmo and Jayanti Devi whose services were not terminated and were still working with the respondent/department and that petitioner’s services were unlawfully terminated and while doing so, respondent had violated the provisions of Section 25-G of the Act as the doctrine of ‘Last come First go’ was not followed by respondent. It is alleged that petitioner was performing his duties properly diligently upto satisfaction of his superiors but respondent department arbitrarily removed him from service despite sufficiency of work. It is contended that respondent department used to given fictional breaks to the petitioner and the said fictional break was liable to be declared illegal as the same tantamount to unfair labour practice. It further remains the case of petitioner that after his termination, he had remained unemployed as till the date of filing of claim petition, he was not gainfully employed and thus petitioner is entitled to reinstatement and full salary from the date of his illegal termination till his reengagement. It is also alleged that as per policy of the State Govt., services of petitioner deserves to be regularized on the completion of eight years i.e. somewhere in the year 2012 as petitioner had rendered requisite period of service in tribal area of Lahaul. Accordingly petitioner prays for quashing impugned verbal termination order w.e.f. 1.9.2005 with further prayer for his reinstatement into service w.e.f. same date as aforesaid with all consequential services benefits besides he has also prayed for his regularization as per the policy of the State Govt.

4. The lis was resisted and contested on filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged on daily wages for seasonal work of forestation, development and conservation during year 2005. It is claimed that after completion of seasonal work and starting of winter season petitioner had himself left the place being resident of District Mandi and thereafter he did not turn up for job. It is also contended that petitioner has not been

retrenched from job by respondent and therefore violation of any of provision of industrial disputes did not arise. It is also contended that petitioner was not entitled for legal protection envisaged under Section 25-B and 25-F of the Act. It is further contended that some persons namely Smt. Dechen Wangmo and Smt. Jayanti Devi had been appointed on compassionate ground on account of untimely deaths of their husbands. It is also denied that any fictional break was given to petitioner. Accordingly, denying all allegations qua violation of the provisions of the Act, the petition was sought to be dismissed.

5. The rejoinder has been filed while controverting, reiterated his stand as maintained in the claim petition. It is denied that he had abandoned the job of his own. It is alleged that stand taken by respondent also gets falsified from its reply as on the one hand respondent claimed that in forest department daily waged workmen are engaged to perform seasonal work only subject to availability of work and funds.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC and (PW2) Shri Jhanu Ram, reply to demand notice & detail of mandays chart (PW1/C) and (PW1/C1), information under RTI showing the names of junior (PW1/D) and (PW1/D1) and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jai Ram, Divisional Forest Officer, Lahaul Forest Division, Keylong, H.P. who proved himself as (RW1), tendered (RW1/B) is the copy of mandays chart of petitioner and closed evidence.

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

8. From the contentions raised, following issues were framed on by my ld. Predecessor on 22.9.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 21.5.2010 qua his termination w.e.f. 01.09.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?** **..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 1.9.2005 is/was illegal and unjustified as alleged?** **..OPP.**
3. **If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged?** **..OPR.**

Relief.

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

- Issue No.1 : No**
- Issue No.2 : Yes**
- Issue No.3 : Discussed**
- Issue No.4 : No**

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

REASONS FOR FINDINGS

ISSUE NO.1

10. Ld. Dy. D.A. for the State has contended that claim petition is bad on account of delay and laches. In support his contention he has referred the facts of the case that petitioner is shown to have left the job in 2005 although 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. On the other hand, Id. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief he has relied upon in *Divisional Manager. HPFC & another vs. Garibu Ram. Latest HLJ 2007 (HP) 1160.* the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In *Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248.* there was a delay of 12 years. In *Ramesh Chand vs. Union of India. CWP No. 812 of 2000.* there was a delay of 9 years. In *CWP No. 95 of 2000* titled as *Divisional Manager vs. Mohinder Kumar.* there was a delay of 14 years. In *Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425.* it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the *Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors. AIR 1964 SC 752.* has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82.* it has been observed by the Hon'ble Supreme Court that:

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

11. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

ISSUES NO. 2 AND 3

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

13. At the very outset, there is no denial to the factum that the petitioner had been engaged as daily waged forest worker in the year 2005 without any written appointment letter by respondent and that petitioner worked in the Sissu Beat, Range Office Keylong Forest Division Lahaul. It also remains the case of petitioner that respondent department had verbally terminated his services vide order dated 1.9.2005 whereas the case of respondent, on the other hand remains that petitioner had abandoned the job of his own who did not turn as can be noticed in manner from which he worked as reflected in mandays chart (RW1/B). To appreciate to controversy in issue, it would be pertinent to refer to mandays chart which showed that petitioner when initially engaged in the month of May, 2005 had worked for 30 days and subsequent in the month of June, 2005 he worked 30 days and in August, 2005, petitioner had worked for 31 days. As such, in the year 2005 petitioner had worked for 30 days in the month of May and in June 2005 he had worked for 30 days, in July petitioner worked for 31 days and in August 2005 he worked for 31 days aggregating to 122 days in the year 2005. Similarly, in the year 2005 in the month of May he worked for 31 days only in preceding one calendar year petitioner has certainly not worked for 240 days or say 160 days as were required to be established by him who claimed to have worked in Lahaul area or District Lahaul & Spiti. It was specifically mentioned that eligibility for regularization of such workers in respect of tribal areas shall be on the basis of number of minimum requisite days i.e. in case District Lahaul and Spiti in area of Lahaul, the daily waged worker for regularization required 160 days only and 240 days in any calendar year were required for other areas. In the case in hand, petitioner has made futile attempt by claiming that fictional breaks had been given as petitioner was not given muster roll for 30 days every month he worked but there is no corresponding evidence which would show if fictional breaks were factually given to petitioner instead he was given muster roll according to work and funds available but on the other hand the period of 160 days is sufficient for him to claim protection having worked in tribal area of Lahaul envisaged under Section 25-F of the Act who shall be deemed to be in continuous service if succeeded in establishing to have worked for 160 days in a year.

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15. Verily, an overall assessment, analysis and synthesis that the plea of abandonment of work by petitioner as alleged by respondent is concerned, there is no iota of evidence on record which would show that the respondent had made any endeavour to call petitioner on job when he absented. It is nowhere in the respondent's evidence that any registered letter or notice was ever sent on the address available or that any charge sheet was raised. It has been rightly contended by ld. counsel for petitioner that abandonment is required to be proved like any

other fact which has not been established by respondent in this case. Ld. counsel for petitioner has relied upon judgment of Hon'ble High Court of Punjab and Haryana reported in **2014 LLR 571 titled as Ved Parkash vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr.**, the relevant para of the judgment is given below:—

“Abandonment-employee was a part-time Electrician. He had been taken a contract for a Canteen in the premises of the Bank/employer. He could not attend duty regularly. He was neither given notice nor retrenchment compensation nor had been indicted in any departmental enquiry. He had completed continuous service for more than 240 days. His services were terminated. He raised an industrial dispute. Industrial Tribunal held the termination to be justified. In writ petition, the High Court observed that it is not proved on record by cogent evidence that the employee had abandoned the employment of his own. Hence, the termination as effected, is illegal”

16. On elucidation of the above mentioned judgment, services of the employee was held to be illegally terminated in view of the fact that no notice was given. At the same time while terminating the services of petitioner, notice as required under Section 25-F of the Act or compensation in lieu thereof notice was not given. By merely stating that petitioner had abandoned job, the plea of respondent could not be accepted as is in his affidavit, respondent as (RW-1) has maintained that due to abandonment of the job of petitioner he was not entitled for any legal protection but as noted above, there being no reliable evidence of abandonment or that any proceedings had been initiated by respondent to hold that petitioner had abandoned the job instead cross-examination of RW1 shows that as per the rules framed by government petitioner was claiming benefit for scheme of regularization of employees who had rendered continuous service of eight years. If we look at evidence of petitioner on the mandays chart it would not be erroneous to conclude that petitioner had worked for 122 days in the year 2005 prior to his termination the petitioner had worked for only 122 days and thus petitioner would not be entitled to protection envisaged under Section 25-F of the Act. In such like situation, it was not incumbent upon respondent to have followed procedure envisaged under Section 25-F of the Act.

17. Another important aspect highlighted by petitioner claiming his retrenchment to be illegal and unjustified is that petitioner has alleged that respondent while terminating his services had not followed the provisions of Section 25-G of the Act which requires adopting of principle of ‘Last come First go’. Reliance has been placed on the judgment of our own Hon'ble High Court reported in **2013 LLR 1206 titled as State of H.P. and another vs. Hardyal Singh** while dealing with Section 25-G of the Act has held that in order to claim benefit envisaged under Section 25-G of the Act, the workman is not liable to prove continuous service of 240 days. Since the plea of management that workman had abandoned the job has not been established and that no objections had been raised about validity of reference for adjudication, workman who had been retrenched but had not worked for 240 days in preceding year was entitled for the protection under Section 25-G. In the case before this court, the plea of petitioner remains that several persons junior to him were still continuing with respondent and that he having joined earlier to them has not been retained by the department while retrenching him.

18. Most importantly, it is evident from mandays chart (RW1/B) relating to Hemant Kumar (petitioner) that he was appointed/engaged in May, 2005 whereas (PW1/D) relating to Rey Chand showed that he got employed in the year 2005. (PW1/C) is the reply to the demand notice, who is shown to have worked with respondent department till 2005 and was appointed in May, 2005. As such, Rey Chand is shown to have joined in the year 2005 who had worked for 365 days and was also continuing as on date. As such, the petitioner had rightly contended that

principle of 'Last come First go' was not followed. From the evidence of petitioner as well as statement of RW1, it can be safely inferred that Rey Chand was junior to petitioner and was working with the respondent department when petitioner was retrenched. Significantly, (RW1) has also admitted that petitioner was not called to join duties after his termination. It has also come in the evidence of respondent that the persons mentioned in (PW1/D1) namely Prem Singh, Tar Dei, Raj Kumar, Jeet Ram etc. were junior to the petitioner as certainly there is evidence on record to show that persons junior to petitioner were still working with the respondent/department.

19. Furthermore, the falsity of respondent's case further gets surfaced from its own plea as the respondent had maintained that petitioner was engaged for seasonal forestry work whereas at the same time respondent had engaged Rey Chand vide its mandays chart on record is shown to have remained employed from 2005 to 2012 exceeding 300 days in each year he worked. That being so, work of respondent/department could not be stated to be seasonal work in any manner. As such, plea of respondent that petitioner was engaged only for seasonal work and abandoned the job of his own respondent could not be accepted as true plea. Accordingly, respondent is held to have violated the provisions of Section 25-G of the Act as has been held in judgment of our own Hon'ble High Court reported in 2013 (138) FLR 1051 titled as Paras Ram vs. Himachal Pradesh State Electricity Board Ltd., in which the Hon'ble High Court held that the junior workmen had been retained by the respondent retrenching petitioner/workman which is the violation of the provisions of Section 25-G of the Act.

20. Ld. Dy. D.A. for the State has also contended that petitioner is not entitled for any back wages as he was gainfully employed after being disengaged by respondent. In his claim petition as maintained that he has remained unemployed and not gainfully employed ever since his termination w.e.f. 1.9.2005 but in the witness box he has specifically admitted that he was gainfully employed and was earning from his agricultural pursuits. Since the plea of having been not gainfully employed gets belied from his inconsistent fact deposed in cross-examination, it would be unsafe to hold that petitioner was not gainfully employed. In the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324, the Hon'ble Apex Court has held that even earning from agricultural would be treated as gainful employment of workman and thus petitioner having remained gainfully employed, would not be entitled to back wages more so petitioner himself admits that he was earning his livelihood from agricultural activities. The petitioner thus shall be entitled for continuity in service and seniority. Issue in hand is accordingly answered in affirmative. Hence, issues no. 2 and 3 are answered accordingly.

ISSUE NO.4

21. Ld. Dy. D.A. has argued that claim petition since not maintainable. Perusal of the reply on record shows that neither any legal or fundamental rights of petitioner had ever been infringed. As has come in the evidence on record that the services of petitioner had been illegally terminated vide verbal order, I see no force in the arguments of Ld. Dy. D.A. as vague plea of denial of infringement of fundamental rights has been raised but the petitioner redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondent.

RELIEF

22. As a sequitor, to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal

termination except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

23. The reference is answered accordingly.

24. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 465/2015
Date of Institution : 29.10.2015
Date of decision : 24.06.2017

Shri Tej Singh s/o Shri Munni Lal, r/o Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P. . *Respondent.*

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

For the Petitioner : Sh. Chetan Sharma, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Tej Singh S/O Shri Munni Lal, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi,

H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. vide demand notice dated 21.5.2010 regarding his alleged illegal termination of services w.e.f. 01.09.2005 suffers from delay and laches? If not, Whether termination of the services of Shri Tej Singh S/O Shri Munni Lal, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. by the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. w.e.f. 01.09.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. The germane facts for the disposal of the reference are thus that the petitioner was engaged as daily waged forest worker in Sissu Beat, Range Office Keylong, Forest Division Lahaul w.e.f. 2.5.2004 where he worked upto 1.9.2005. The grievance of petitioner remains that his services had been terminated verbally by respondent on 1.9.2005 without assigning any reason and at the same time without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). It is alleged that neither any notice nor compensation in lieu of notice period had been paid to petitioner by respondent department before terminating the services in violation of the provisions of Section 25-F of the Act. It is claimed that work and conduct of petitioner had always remained satisfactory and that petitioner had completed 160 days in each calendar year while working in Forest Division Lahaul. It further remains the grievance of petitioner that several other persons who were junior to petitioner namely Yaga Chand, Nand Lal, Rai Chand, Dechen Wangmo and Jayanti Devi whose services were not terminated and were still working with the respondent/department and that petitioner's services were unlawfully terminated and while doing so, respondent had violated the provisions of Section 25-G of the Act as the doctrine of 'Last come First go' was not followed by respondent. It is alleged that petitioner was performing his duties properly diligently upto satisfaction of his superiors but respondent department arbitrarily removed him from service despite sufficiency of work. It is contended that respondent department used to given fictional breaks to the petitioner and the said fictional break was liable to be declared illegal as the same tantamount to unfair labour practice. It further remains the case of petitioner that after his termination, he had remained unemployed as till the date of filing of claim petition, he was not gainfully employed and thus petitioner is entitled to reinstatement and full salary from the date of his illegal termination till his reengagement. It is also alleged that as per policy of the State Govt., services of petitioner deserves to be regularized on the completion of eight years i.e. somewhere in the year 2012 as petitioner had rendered requisite period of service in tribal area of Lahaul. Accordingly petitioner prays for quashing impugned verbal termination order w.e.f. 1.9.2005 with further prayer for his reinstatement into service w.e.f. same date as aforesaid with all consequential services benefits besides he has also prayed for his regularization as per the policy of the State Govt.

4. The lis was resisted and contested on filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged on daily wages for seasonal work of forestation, development and conservation during year 2005. It is claimed that after completion of seasonal work and starting of winter season petitioner had himself left the place being resident of District Mandi and thereafter he did not turn up for job. It is also contended that petitioner has not been retrenched from job by respondent and therefore violation of any of provision of industrial disputes did not arise. It is also contended that petitioner was not entitled for legal protection

envisaged under Section 25-B and 25-F of the Act. It is further contended that some persons namely Smt. Dechen Wangmo and Smt. Jayanti Devi had been appointed on compassionate ground on account of untimely deaths of their husbands. It is also denied that any fictional break was given to petitioner. Accordingly, denying all allegations qua violation of the provisions of the Act, the petition was sought to be dismissed.

5. The rejoinder has been filed while controverting, reiterated his stand as maintained in the claim petition. It is denied that he had abandoned the job of his own. It is alleged that stand taken by respondent also gets falsified from its reply as on the one hand respondent claimed that in forest department daily waged workmen are engaged to perform seasonal work only subject to availability of work and funds.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC and (PW2) Shri Jhanu Ram, reply to demand notice & detail of mandays chart (PW1/C) and (PW1/C1), information under RTI showing the names of junior (PW1/D) and (PW1/D1) and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jai Ram, Divisional Forest Officer, Lahaul Forest Division, Keylong, H.P. who proved himself as (RW1), tendered (RW1/B) is the copy of mandays chart of petitioner and closed evidence.

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

8. From the contentions raised, following issues were framed on by my ld. Predecessor on 22.9.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 21.5.2010 qua his termination w.e.f. 01.09.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 1.9.2005 is/was illegal and unjustified as alleged? . . .OPP.**
3. **If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS**ISSUE NO.1**

10. Ld. Dy. D.A. for the State has contended that claim petition is bad on account of delay and laches. In support his contention he has referred the facts of the case that petitioner is shown to have left the job in 2006 although 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. On the other hand, Id. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief he has relied upon in **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In **CWP No. 95 of 2000** titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors. AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

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

11. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

ISSUES NO. 2 AND 3

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

13. At the very outset, there is no denial to the factum that the petitioner had been engaged as daily waged forest worker in the year 2005 without any written appointment letter

by respondent and that petitioner worked in the Sissu Beat, Range Office Keylong Forest Division Lahaul. It also remains the case of petitioner that respondent department had verbally terminated his services vide order dated 1.9.2005 whereas the case of respondent, on the other hand remains that petitioner had abandoned the job of his own who did not turn as can be noticed in manner from which he worked as reflected in mandays chart (RW1/B). To appreciate to controversy in issue, it would be pertinent to refer to mandays chart which showed that petitioner when initially engaged in the month of May, 2005 had worked for 30 days and subsequent in the month of June, 2005 he worked 30 days and in August, 2005, petitioner had worked for 31 days. As such, in the year 2005 petitioner had worked for 30 days in the month of May and in June 2005 he had worked for 30 days, in July petitioner worked for 31 days and in August 2005 he worked for 31 days aggregating to 122 days in the year 2005. Similarly, in the year 2005 in the month of May he worked for 31 days only in preceding one calendar year petitioner has certainly not worked for 240 days or say 160 days as were required to be established by him who claimed to have worked in Lahaul area or District Lahaul & Spiti. It was specifically mentioned that eligibility for regularization of such workers in respect of tribal areas shall be on the basis of number of minimum requisite days i.e. in case District Lahaul and Spiti in area of Lahaul, the daily waged worker for regularization required 160 days only and 240 days in any calendar year were required for other areas. In the case in hand, petitioner has made futile attempt by claiming that fictional breaks had been given as petitioner was not given muster roll for 30 days every month he worked but there is no corresponding evidence which would show if fictional breaks were factually given to petitioner instead he was given muster roll according to work and funds available but on the other hand the period of 160 days is sufficient for him to claim protection having worked in tribal area of Lahaul envisaged under Section 25-F of the Act who shall be deemed to be in continuous service if succeeded in establishing to have worked for 160 days in a year.

14. In petitioner's evidence, stepping into witness box as (PW1) petitioner has sworn in detailed affidavit (PW1/A) under Order 18 Rule 4 CPC stipulating therein the manner he was engaged as daily waged forest worker and till when he continued to work he has in unequivocal terms stated that he had neither been given any notice envisaged under Section 25-F of the Act nor any compensation in lieu thereof notice has been paid to him and therefore the termination of the services of petitioner by respondent was manifestly illegal as the respondent had failed to adhere to the mandatory provisions of the Act. It is further alleged in the affidavit that work and conduct of petitioner remained satisfactory for the entire 160 days in a year with the respondent department and being employed remained posted in the hard/tribal area of Lahaul, District Lahaul and Spiti as the period of 160 days as per the notification of govt. as stated above for regularization per its policy. The version of petitioner has been corroborated by (PW2) Shri Jhanu Ram in the same manner as petitioner has stipulated in his affidavit but in cross-examination this witness showed that he was from village of petitioner but nothing in cross-examination could be elicited which would establish that he deposed falsely in favour of petitioner. Significantly, (PW2) too worked with forest department whose services had been regularized. As such, there exists no discrepancy or any inconsistency in testimony of (PW2) and the same can be relied.

15. Verily, an overall assessment, analysis and synthesis that the plea of abandonment of work by petitioner as alleged by respondent is concerned, there is no iota of evidence on record which would show that the respondent had made any endeavour to call petitioner on job when he absented. It is nowhere in the respondent's evidence that any registered letter or notice was ever sent on the address available or that any charge sheet was raised. It has been rightly contended by ld. counsel for petitioner that abandonment is required to be proved like any other fact which has not been established by respondent in this case. Ld. counsel for petitioner has relied upon judgment of Hon'ble High Court of Punjab and Haryana reported in **2014 LLR**

571 titled as Ved Parkash vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr., the relevant para of the judgment is given below:-

“Abandonment-employee was a part-time Electrician. He had been taken a contract for a Canteen in the premises of the Bank/employer. He could not attend duty regularly. He was neither given notice nor retrenchment compensation nor had been indicted in any departmental enquiry. He had completed continuous service for more than 240 days. His services were terminated. He raised an industrial dispute. Industrial Tribunal held the termination to be justified. In writ petition, the High Court observed that it is not proved on record by cogent evidence that the employee had abandoned the employment of his own. Hence, the termination as effected, is illegal”

16. On elucidation of the above mentioned judgment, services of the employee was held to be illegally terminated in view of the fact that no notice was given. At the same time while terminating the services of petitioner, notice as required under Section 25-F of the Act or compensation in lieu thereof notice was not given. By merely stating that petitioner had abandoned job, the plea of respondent could not be accepted as is in his affidavit, respondent as (RW-1) has maintained that due to abandonment of the job of petitioner he was not entitled for any legal protection but as noted above, there being no reliable evidence of abandonment or that any proceedings had been initiated by respondent to hold that petitioner had abandoned the job instead cross-examination of RW1 shows that as per the rules framed by government petitioner was claiming benefit for scheme of regularization of employees who had rendered continuous service of eight years. If we look at evidence of petitioner on the mandays chart it would not be erroneous to conclude that petitioner had worked for 122 days in the year 2005 prior to his termination the petitioner had worked for only 122 days and thus petitioner would not be entitled to protection envisaged under Section 25-F of the Act. In such like situation, it was not incumbent upon respondent to have followed procedure envisaged under Section 25-F of the Act.

17. Another important aspect highlighted by petitioner claiming his retrenchment to be illegal and unjustified is that petitioner has alleged that respondent while terminating his services had not followed the provisions of Section 25-G of the Act which requires adopting of principle of ‘Last come First go’. Reliance has been placed on the judgment of our own Hon’ble High Court reported in **2013 LLR 1206 titled as State of H.P. and another vs. Hardyal Singh** while dealing with Section 25-G of the Act has held that in order to claim benefit envisaged under Section 25-G of the Act, the workman is not liable to prove continuous service of 240 days. Since the plea of management that workman had abandoned the job has not been established and that no objections had been raised about validity of reference for adjudication, workman who had been retrenched but had not worked for 240 days in preceding year was entitled for the protection under Section 25-G. In the case before this court, the plea of petitioner remains that several persons junior to him were still continuing with respondent and that he having joined earlier to them has not been retained by the department while retrenching him.

18. Most importantly, it is evident from mandays chart (RW1/B) relating to Tej Singh (petitioner) that he was appointed/engaged in May, 2005 whereas (PW1/D) relating to Rey Chand showed that he got employed in the year 2005. (PW1/C) is the reply to the demand notice, who is shown to have worked with respondent department till 2005 and was appointed in May, 2005. As such, Rey Chand is shown to have joined in the year 2005 who had worked for 365 days and was also continuing as on date. As such, the petitioner had rightly contended that principle of ‘Last come First go’ was not followed. From the evidence of petitioner as well as statement of RW1, it can be safely inferred that Rey Chand was junior to petitioner and was

working with the respondent department when petitioner was retrenched. Significantly, (RW1) has also admitted that petitioner was not called to join duties after his termination. It has also come in the evidence of respondent that the persons mentioned in (PW1/D1) namely Prem Singh, Tar Dei, Raj Kumar, Jeet Ram etc. were junior to the petitioner as certainly there is evidence on record to show that persons junior to petitioner were still working with the respondent/department.

19. Furthermore, the falsity of respondent's case further gets surfaced from its own plea as the respondent had maintained that petitioner was engaged for seasonal forestry work whereas at the same time respondent had engaged Rey Chand vide its mandays chart on record is shown to have remained employed from 2005 to 2012 exceeding 300 days in each year he worked. That being so, work of respondent/department could not be stated to be seasonal work in any manner. As such, plea of respondent that petitioner was engaged only for seasonal work and abandoned the job of his own respondent could not be accepted as true plea. Accordingly, respondent is held to have violated the provisions of Section 25-G of the Act as has been held in judgment of our own Hon'ble High Court reported in 2013 (138) FLR 1051 titled as Paras Ram vs. Himachal Pradesh State Electricity Board Ltd., in which the Hon'ble High Court held that the junior workmen had been retained by the respondent retrenching petitioner/workman which is the violation of the provisions of Section 25-G of the Act.

20. Ld. Dy. D.A. for the State has also contended that petitioner is not entitled for any back wages as he was gainfully employed after being disengaged by respondent. In his claim petition as maintained that he has remained unemployed and not gainfully employed ever since his termination w.e.f. 1.9.2005 but in the witness box he has specifically admitted that he was gainfully employed and was earning from his agricultural pursuits. Since the plea of having been not gainfully employed gets belied from his inconsistent fact deposed in cross-examination, it would be unsafe to hold that petitioner was not gainfully employed. In the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324, the Hon'ble Apex Court has held that even earning from agricultural would be treated as gainful employment of workman and thus petitioner having remained gainfully employed, would not be entitled to back wages more so petitioner himself admits that he was earning his livelihood from agricultural activities. The petitioner thus shall be entitled for continuity in service and seniority. Issue in hand is accordingly answered in affirmative. Hence, issues no. 2 and 3 are answered accordingly.

ISSUE NO.4

21. Ld. Dy. D.A. has argued that claim petition since not maintainable. Perusal of the reply on record shows that neither any legal or fundamental rights of petitioner had ever been infringed. As has come in the evidence on record that the services of petitioner had been illegally terminated vide verbal order, I see no force in the arguments of Ld. Dy. D.A. as vague plea of denial of infringement of fundamental rights has been raised but the petitioner redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondent.

RELIEF

22. As a sequitor, to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

23. The reference is answered accordingly.

24. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 467/2015

Date of Institution : 29.10.2015

Date of decision : 24.06.2017

Shri Leela Mani s/o Shri Neter Singh, r/o Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P. . *Respondent.*

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

For the Petitioner : Sh. Chetan Sharma, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Leela Mani S/O Shri Neter Singh, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. vide demand notice dated 21.5.2010 regarding his alleged illegal termination of services w.e.f. 01.09.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Leela Mani S/O Shri Neter Singh, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District

Mandi, H.P. by the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. w.e.f. 01.09.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. The germane facts for the disposal of the reference are thus that the petitioner was engaged as daily waged forest worker in Sissu Beat, Range Office Keylong, Forest Division Lahaul w.e.f. 2.5.2004 where he worked upto 1.9.2005. The grievance of petitioner remains that his services had been terminated verbally by respondent on 1.9.2005 without assigning any reason and at the same time without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). It is alleged that neither any notice nor compensation in lieu of notice period had been paid to petitioner by respondent department before terminating the services in violation of the provisions of Section 25-F of the Act. It is claimed that work and conduct of petitioner had always remained satisfactory and that petitioner had completed 160 days in each calendar year while working in Forest Division Lahaul. It further remains the grievance of petitioner that several other persons who were junior to petitioner namely Yaga Chand, Nand Lal, Rai Chand, Dechen Wangmo and Jayanti Devi whose services were not terminated and were still working with the respondent/department and that petitioner's services were unlawfully terminated and while doing so, respondent had violated the provisions of Section 25-G of the Act as the doctrine of 'Last come First go' was not followed by respondent. It is alleged that petitioner was performing his duties properly diligently upto satisfaction of his superiors but respondent department arbitrarily removed him from service despite sufficiency of work. It is contended that respondent department used to given fictional breaks to the petitioner and the said fictional break was liable to be declared illegal as the same tantamount to unfair labour practice. It further remains the case of petitioner that after his termination, he had remained unemployed as till the date of filing of claim petition, he was not gainfully employed and thus petitioner is entitled to reinstatement and full salary from the date of his illegal termination till his reengagement. It is also alleged that as per policy of the State Govt., services of petitioner deserves to be regularized on the completion of eight years i.e. somewhere in the year 2012 as petitioner had rendered requisite period of service in tribal area of Lahaul. Accordingly petitioner prays for quashing impugned verbal termination order w.e.f. 1.9.2005 with further prayer for his reinstatement into service w.e.f. same date as aforesaid with all consequential services benefits besides he has also prayed for his regularization as per the policy of the State Govt.

4. The lis was resisted and contested on filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged on daily wages for seasonal work of forestation, development and conservation during year 2005. It is claimed that after completion of seasonal work and starting of winter season petitioner had himself left the place being resident of District Mandi and thereafter he did not turn up for job. It is also contended that petitioner has not been retrenched from job by respondent and therefore violation of any of provision of industrial disputes did not arise. It is also contended that petitioner was not entitled for legal protection envisaged under Section 25-B and 25-F of the Act. It is further contended that some persons namely Smt. Dechen Wangmo and Smt. Jayanti Devi had been appointed on compassionate ground on account of untimely deaths of their husbands. It is also denied that any fictional break was given to petitioner. Accordingly, denying all allegations qua violation of the provisions of the Act, the petition was sought to be dismissed.

5. The rejoinder has been filed while controverting, reiterated his stand as maintained in the claim petition. It is denied that he had abandoned the job of his own. It is alleged that stand taken by respondent also gets falsified from its reply as on the one hand respondent claimed that in forest department daily waged workmen are engaged to perform seasonal work only subject to availability of work and funds.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC and (PW2) Shri Roop Chand, reply to demand notice & detail of mandays chart (PW1/C) and (PW1/C1), information under RTI showing the names of junior (PW1/D) and (PW1/D1) and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jai Ram, Divisional Forest Officer, Lahaul Forest Division, Keylong, H.P. who proved himself as (RW1), tendered (RW1/B) is the copy of mandays chart of petitioner and closed evidence.

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

8. From the contentions raised, following issues were framed on by my ld. Predecessor on 22.9.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 21.5.2010 qua his termination w.e.f. 01.09.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?** **..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 1.9.2005 is/was illegal and unjustified as alleged?** **..OPP.**
3. **If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged?** **..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS

ISSUE NO.1

10. Ld. Dy. D.A. for the State has contended that claim petition is bad on account of delay and laches. In support his contention he has referred the facts of the case that petitioner is shown

to have left the job in 2005 although 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. On the other hand, Id. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief he has relied upon in **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160,** the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000,** there was a delay of 9 years. In **CWP No. 95 of 2000** titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425,** it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors. AIR 1964 SC 752,** has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82.** it has been observed by the Hon'ble Supreme Court that:

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

11. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

ISSUES NO. 2 AND 3

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

13. At the very outset, there is no denial to the factum that the petitioner had been engaged as daily waged forest worker in the year 2005 without any written appointment letter by respondent and that petitioner worked in the Sissu Beat, Range Office Keylong Forest Division Lahaul. It also remains the case of petitioner that respondent department had verbally terminated his services vide order dated 1.9.2005 whereas the case of respondent, on the other hand remains that petitioner had abandoned the job of his own who did not turn as can be noticed in manner from which he worked as reflected in mandays chart (RW1/B). To appreciate to controversy in issue, it would be pertinent to refer to mandays chart which showed that

petitioner when initially engaged in the month of May, 2005 had worked for 30 days and subsequent in the month of June, 2005 he worked 30 days and in August, 2005, petitioner had worked for 31 days. As such, in the year 2005 petitioner had worked for 30 days in the month of May and in June 2005 he had worked for 30 days, in July petitioner worked for 31 days and in August 2005 he worked for 31 days aggregating to 122 days in the year 2005. Similarly, in the year 2005 in the month of May he worked for 31 days only in preceding one calendar year petitioner has certainly not worked for 240 days or say 160 days as were required to be established by him who claimed to have worked in Lahaul area or District Lahaul & Spiti. It was specifically mentioned that eligibility for regularization of such workers in respect of tribal areas shall be on the basis of number of minimum requisite days i.e. in case District Lahaul and Spiti in area of Lahaul, the daily waged worker for regularization required 160 days only and 240 days in any calendar year were required for other areas. In the case in hand, petitioner has made futile attempt by claiming that fictional breaks had been given as petitioner was not given muster roll for 30 days every month he worked but there is no corresponding evidence which would show if fictional breaks were factually given to petitioner instead he was given muster roll according to work and funds available but on the other hand the period of 160 days is sufficient for him to claim protection having worked in tribal area of Lahaul envisaged under Section 25-F of the Act who shall be deemed to be in continuous service if succeeded in establishing to have worked for 160 days in a year.

14. In petitioner's evidence, stepping into witness box as (PW1) petitioner has sworn in detailed affidavit (PW1/A) under Order 18 Rule 4 CPC stipulating therein the manner he was engaged as daily waged forest worker and till when he continued to work he has in unequivocal terms stated that he had neither been given any notice envisaged under Section 25-F of the Act nor any compensation in lieu thereof notice has been paid to him and therefore the termination of the services of petitioner by respondent was manifestly illegal as the respondent had failed to adhere to the mandatory provisions of the Act. It is further alleged in the affidavit that work and conduct of petitioner remained satisfactory for the entire 160 days in a year with the respondent department and being employed remained posted in the hard/tribal area of Lahaul, District Lahaul and Spiti as the period of 160 days as per the notification of govt. as stated above for regularization per its policy. The version of petitioner has been corroborated by (PW2) Shri Roop Chand in the same manner as petitioner has stipulated in his affidavit but in cross-examination this witness showed that he was from village of petitioner but nothing in cross-examination could be elicited which would establish that he deposed falsely in favour of petitioner. Significantly, (PW2) too worked with forest department whose services had been regularized. As such, there exists no discrepancy or any inconsistency in testimony of (PW2) and the same can be relied.

15. Verily, an overall assessment, analysis and synthesis that the plea of abandonment of work by petitioner as alleged by respondent is concerned, there is no iota of evidence on record which would show that the respondent had made any endeavour to call petitioner on job when he absented. It is nowhere in the respondent's evidence that any registered letter or notice was ever sent on the address available or that any charge sheet was raised. It has been rightly contended by ld. counsel for petitioner that abandonment is required to be proved like any other fact which has not been established by respondent in this case. Ld. counsel for petitioner has relied upon judgment of Hon'ble High Court of Punjab and Haryana reported in 2014 LLR 571 titled as Ved Parkash vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr., the relevant para of the judgment is given below:—

“Abandonment-employee was a part-time Electrician. He had been taken a contract for a Canteen in the premises of the Bank/employer. He could not attend duty regularly. He was neither given notice nor retrenchment compensation nor had been

indicted in any departmental enquiry. He had completed continuous service for more than 240 days. His services were terminated. He raised an industrial dispute. Industrial Tribunal held the termination to be justified. In writ petition, the High Court observed that it is not proved on record by cogent evidence that the employee had abandoned the employment of his own. Hence, the termination as effected, is illegal”

16. On elucidation of the above mentioned judgment, services of the employee was held to be illegally terminated in view of the fact that no notice was given. At the same time while terminating the services of petitioner, notice as required under Section 25-F of the Act or compensation in lieu thereof notice was not given. By merely stating that petitioner had abandoned job, the plea of respondent could not be accepted as is in his affidavit, respondent as (RW-1) has maintained that due to abandonment of the job of petitioner he was not entitled for any legal protection but as noted above, there being no reliable evidence of abandonment or that any proceedings had been initiated by respondent to hold that petitioner had abandoned the job instead cross-examination of RW1 shows that as per the rules framed by government petitioner was claiming benefit for scheme of regularization of employees who had rendered continuous service of eight years. If we look at evidence of petitioner on the mandays chart it would not be erroneous to conclude that petitioner had worked for 122 days in the year 2005 prior to his termination the petitioner had worked for only 122 days and thus petitioner would not be entitled to protection envisaged under Section 25-F of the Act. In such like situation, it was not incumbent upon respondent to have followed procedure envisaged under Section 25-F of the Act.

17. Another important aspect highlighted by petitioner claiming his retrenchment to be illegal and unjustified is that petitioner has alleged that respondent while terminating his services had not followed the provisions of Section 25-G of the Act which requires adopting of principle of ‘Last come First go’. Reliance has been placed on the judgment of our own Hon’ble High Court reported in **2013 LLR 1206 titled as State of H.P. and another vs. Hardyal Singh** while dealing with Section 25-G of the Act has held that in order to claim benefit envisaged under Section 25-G of the Act, the workman is not liable to prove continuous service of 240 days. Since the plea of management that workman had abandoned the job has not been established and that no objections had been raised about validity of reference for adjudication, workman who had been retrenched but had not worked for 240 days in preceding year was entitled for the protection under Section 25-G. In the case before this court, the plea of petitioner remains that several persons junior to him were still continuing with respondent and that he having joined earlier to them has not been retained by the department while retrenching him.

18. Most importantly, it is evident from mandays chart (RW1/B) relating to Leela Mani (petitioner) that he was appointed/engaged in May, 2005 whereas (PW1/D) relating to Rey Chand showed that he got employed in the year 2005. (PW1/C) is the reply to the demand notice, who is shown to have worked with respondent department till 2005 and was appointed in May, 2005. As such, Rey Chand is shown to have joined in the year 2005 who had worked for 365 days and was also continuing as on date. As such, the petitioner had rightly contended that principle of ‘Last come First go’ was not followed. From the evidence of petitioner as well as statement of RW1, it can be safely inferred that Rey Chand was junior to petitioner and was working with the respondent department when petitioner was retrenched. Significantly, (RW1) has also admitted that petitioner was not called to join duties after his termination. It has also come in the evidence of respondent that the persons mentioned in (PW1/D1) namely Prem Singh, Tar Dei, Raj Kumar, Jeet Ram etc. were junior to the petitioner as certainly there is evidence on record to show that persons junior to petitioner were still working with the respondent/department.

19. Furthermore, the falsity of respondent's case further gets surfaced from its own plea as the respondent had maintained that petitioner was engaged for seasonal forestry work whereas at the same time respondent had engaged Rey Chand vide its mandays chart on record is shown to have remained employed from 2005 to 2012 exceeding 300 days in each year he worked. That being so, work of respondent/department could not be stated to be seasonal work in any manner. As such, plea of respondent that petitioner was engaged only for seasonal work and abandoned the job of his own respondent could not be accepted as true plea. Accordingly, respondent is held to have violated the provisions of Section 25-G of the Act as has been held in judgment of our own Hon'ble High Court reported in 2013 (138) FLR 1051 titled as Paras Ram vs. Himachal Pradesh State Electricity Board Ltd., in which the Hon'ble High Court held that the junior workmen had been retained by the respondent retrenching petitioner/workman which is the violation of the provisions of Section 25-G of the Act.

20. Ld. Dy. D.A. for the State has also contended that petitioner is not entitled for any back wages as he was gainfully employed after being disengaged by respondent. In his claim petition as maintained that he has remained unemployed and not gainfully employed ever since his termination w.e.f. 1.9.2005 but in the witness box he has specifically admitted that he was gainfully employed and was earning from his agricultural pursuits. Since the plea of having been not gainfully employed gets belied from his inconsistent fact deposed in cross-examination, it would be unsafe to hold that petitioner was not gainfully employed. In the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324, the Hon'ble Apex Court has held that even earning from agricultural would be treated as gainful employment of workman and thus petitioner having remained gainfully employed, would not be entitled to back wages more so petitioner himself admits that he was earning his livelihood from agricultural activities. The petitioner thus shall be entitled for continuity in service and seniority. Issue in hand is accordingly answered in affirmative. Hence, issues no. 2 and 3 are answered accordingly.

ISSUE NO.4

21. Ld. Dy. D.A. has argued that claim petition since not maintainable. Perusal of the reply on record shows that neither any legal or fundamental rights of petitioner had ever been infringed. As has come in the evidence on record that the services of petitioner had been illegally terminated vide verbal order, I see no force in the arguments of Ld. Dy. D.A. as vague plea of denial of infringement of fundamental rights has been raised but the petitioner redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondent.

RELIEF

22. As a sequittor, to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

23. The reference is answered accordingly.

24. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 469/2015

Date of Institution : 29.10.2015

Date of decision : 24.06.2017

Shri Daulat Ram s/o Shri Reet Ram, r/o Village and Post Office Khuhan, Sub Tehsil Balichowki, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P. . *Respondent.*

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

For the Petitioner : Sh. Chetan Sharma, Adv.

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

AWARD

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

“Whether the industrial dispute raised by the worker Shri Daulat Ram S/O Shri Reet Ram, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. before the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. vide demand notice dated 21.5.2010 regarding his alleged illegal termination of services w.e.f. 01.10.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Daulat Ram S/O Shri Reet Ram, R/O Village and Post Office Khuhan, Sub Tehsil Bali Chowki, District Mandi, H.P. by the Divisional Forest Officer, Lahaul Forest Division, at Keylong, District Lahaul & Spiti, H.P. w.e.f. 01.10.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that the petitioner was engaged as daily waged forest worker in Sissu Beat, Range Office Keylong, Forest Division Lahaul w.e.f. 2.5.2004 where he worked upto 1.10.2005. The grievance of petitioner remains that his services had been terminated verbally by respondent on 1.10.2005 without assigning any reason and at the same time without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). It is alleged that neither any notice nor compensation in lieu of notice period had been paid to petitioner by respondent department before terminating the services in violation of the provisions of Section 25-F of the Act. It is claimed that work and conduct of petitioner had always remained satisfactory and that petitioner had completed 160 days in each calendar year while working in Forest Division Lahaul. It further remains the grievance of petitioner that several other persons who were junior to petitioner namely Yaga Chand, Nand Lal, Rai Chand, Dechen Wangmo and Jayanti Devi whose services were not terminated and were still working with the respondent/department and that petitioner's services were unlawfully terminated and while doing so, respondent had violated the provisions of Section 25-G of the Act as the doctrine of 'Last come First go' was not followed by respondent. It is alleged that petitioner was performing his duties properly diligently upto satisfaction of his superiors but respondent department arbitrarily removed him from service despite sufficiency of work. It is contended that respondent department used to give fictional breaks to the petitioner and the said fictional break was liable to be declared illegal as the same tantamount to unfair labour practice. It further remains the case of petitioner that after his termination, he had remained unemployed as till the date of filing of claim petition, he was not gainfully employed and thus petitioner is entitled to reinstatement and full salary from the date of his illegal termination till his reengagement. It is also alleged that as per policy of the State Govt., services of petitioner deserves to be regularized on the completion of eight years i.e. somewhere in the year 2012 as petitioner had rendered requisite period of service in tribal area of Lahaul. Accordingly petitioner prays for quashing impugned verbal termination order w.e.f. 1.10.2005 with further prayer for his reinstatement into service w.e.f. same date as aforesaid with all consequential services benefits besides he has also prayed for his regularization as per the policy of the State Govt.

4. The lis was resisted and contested on filing inter-alia reply taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged on daily wages for seasonal work of forestation, development and conservation during year 2005. It is claimed that after completion of seasonal work and starting of winter season petitioner had himself left the place being resident of District Mandi and thereafter he did not turn up for job. It is also contended that petitioner has not been retrenched from job by respondent and therefore violation of any of provision of industrial disputes did not arise. It is also contended that petitioner was not entitled for legal protection envisaged under Section 25-B and 25-F of the Act. It is further contended that some persons namely Smt. Dechen Wangmo and Smt. Jayanti Devi had been appointed on compassionate ground on account of untimely deaths of their husbands. It is also denied that any fictional break was given to petitioner. Accordingly, denying all allegations qua violation of the provisions of the Act, the petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition. It is denied that he had abandoned the job of his own. It is alleged that stand taken by respondent also gets falsified from its reply as on the one hand respondent claimed that in forest department daily waged workmen are engaged to perform seasonal work only subject to availability of work and funds.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC and (PW2) Shri Ledh Ram, reply to demand notice & detail of mandays chart (PW1/C) and (PW1/C1), information under RTI showing the names of

junior (PW1/D) and (PW1/D1) and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jai Ram, Divisional Forest Officer, Lahaul Forest Division, Keylong, H.P. who proved himself as (RW1), tendered (RW1/B) is the copy of mandays chart of petitioner and closed evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on by my ld. Predecessor on 22.9.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 21.5.2010 qua his termination w.e.f. 01.10.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of the services of petitioner by the respondent w.e.f. 1.10.2005 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS

ISSUE NO.1

10. Ld. Dy. D.A. for the State has contended that claim petition is bad on account of delay and laches. In support his contention he has referred the facts of the case that petitioner is shown to have left the job in 2005 although 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. On the other hand, ld. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief he has relied upon in **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to

industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors. AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

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

11. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

ISSUES NO. 2 AND 3

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

13. At the very outset, there is no denial to the factum that the petitioner had been engaged as daily waged forest worker in the year 2005 without any written appointment letter by respondent and that petitioner worked in the Sissu Beat, Range Office Keylong Forest Division Lahaul. It also remains the case of petitioner that respondent department had verbally terminated his services vide order dated 1.10.2005 whereas the case of respondent, on the other hand remains that petitioner had abandoned the job of his own who did not turn as can be noticed in manner from which he worked as reflected in mandays chart (RW1/B). To appreciate to controversy in issue, it would be pertinent to refer to mandays chart which showed that petitioner when initially engaged in the month of May, 2005 had worked for 30 days and subsequent in the month of June, 2005 he worked 30 days and in August, 2005, petitioner had worked for 31 days. As such, in the year 2005 petitioner had worked for 30 days in the month of May and in June 2005 he had worked for 30 days, in July petitioner worked for 31 days in August 2005 he worked for 31 days and in September, 2005 he worked for 30 days aggregating to 152 days in the year 2005. Similarly, in the year 2005 in the month of May he worked for 31 days only in preceding one calendar year petitioner has certainly not worked for 240 days or

say 160 days as were required to be established by him who claimed to have worked in Lahaul area or District Lahaul & Spiti. It was specifically mentioned that eligibility for regularization of such workers in respect of tribal areas shall be on the basis of number of minimum requisite days i.e. in case District Lahaul and Spiti in area of Lahaul, the daily waged worker for regularization required 160 days only and 240 days in any calendar year were required for other areas. In the case in hand, petitioner has made futile attempt by claiming that fictional breaks had been given as petitioner was not given muster roll for 30 days every month he worked but there is no corresponding evidence which would show if fictional breaks were factually given to petitioner instead he was given muster roll according to work and funds available but on the other hand the period of 160 days is sufficient for him to claim protection having worked in tribal area of Lahaul envisaged under Section 25-F of the Act who shall be deemed to be in continuous service if succeeded in establishing to have worked for 160 days in a year.

14. In petitioner's evidence, stepping into witness box as (PW1) petitioner has sworn in detailed affidavit (PW1/A) under Order 18 Rule 4 CPC stipulating therein the manner he was engaged as daily waged forest worker and till when he continued to work he has in unequivocal terms stated that he had neither been given any notice envisaged under Section 25-F of the Act nor any compensation in lieu thereof notice has been paid to him and therefore the termination of the services of petitioner by respondent was manifestly illegal as the respondent had failed to adhere to the mandatory provisions of the Act. It is further alleged in the affidavit that work and conduct of petitioner remained satisfactory for the entire 160 days in a year with the respondent department and being employed remained posted in the hard/tribal area of Lahaul, District Lahaul and Spiti as the period of 160 days as per the notification of govt. as stated above for regularization per its policy. The version of petitioner has been corroborated by (PW2) Shri Ledh Ram in the same manner as petitioner has stipulated in his affidavit but in cross-examination this witness showed that he was from village of petitioner but nothing in cross-examination could be elicited which would establish that he deposed falsely in favour of petitioner. Significantly, (PW2) too worked with forest department whose services had been regularized. As such, there exists no discrepancy or any inconsistency in testimony of (PW2) and the same can be relied.

15. Verily, an overall assessment, analysis and synthesis that the plea of abandonment of work by petitioner as alleged by respondent is concerned, there is no iota of evidence on record which would show that the respondent had made any endeavour to call petitioner on job when he absented. It is nowhere in the respondent's evidence that any registered letter or notice was ever sent on the address available or that any charge sheet was raised. It has been rightly contended by ld. counsel for petitioner that abandonment is required to be proved like any other fact which has not been established by respondent in this case. Ld. counsel for petitioner has relied upon judgment of Hon'ble High Court of Punjab and Haryana reported in 2014 LLR 571 titled as Ved Parkash vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr., the relevant para of the judgment is given below:—

“Abandonment-employee was a part-time Electrician. He had been taken a contract for a Canteen in the premises of the Bank/employer. He could not attend duty regularly. He was neither given notice nor retrenchment compensation nor had been indicted in any departmental enquiry. He had completed continuous service for more than 240 days. His services were terminated. He raised an industrial dispute. Industrial Tribunal held the termination to be justified. In writ petition, the High Court observed that it is not proved on record by cogent evidence that the employee had abandoned the employment of his own. Hence, the termination as effected, is illegal”

16. On elucidation of the above mentioned judgment, services of the employee was held to be illegally terminated in view of the fact that no notice was given. At the same time while terminating the services of petitioner, notice as required under Section 25-F of the Act or compensation in lieu thereof notice was not given. By merely stating that petitioner had abandoned job, the plea of respondent could not be accepted as is in his affidavit, respondent as (RW-1) has maintained that due to abandonment of the job of petitioner he was not entitled for any legal protection but as noted above, there being no reliable evidence of abandonment or that any proceedings had been initiated by respondent to hold that petitioner had abandoned the job instead cross-examination of RW1 shows that as per the rules framed by government petitioner was claiming benefit for scheme of regularization of employees who had rendered continuous service of eight years. If we look at evidence of petitioner on the mandays chart it would not be erroneous to conclude that petitioner had worked for 152 days in the year 2005 prior to his termination the petitioner had worked for only 122 days and thus petitioner would not be entitled to protection envisaged under Section 25-F of the Act. In such like situation, it was not incumbent upon respondent to have followed procedure envisaged under Section 25-F of the Act.

17. Another important aspect highlighted by petitioner claiming his retrenchment to be illegal and unjustified is that petitioner has alleged that respondent while terminating his services had not followed the provisions of Section 25-G of the Act which requires adopting of principle of 'Last come First go'. Reliance has been placed on the judgment of our own Hon'ble High Court reported in 2013 LLR 1206 titled as State of H.P. and another vs. Hardyal Singh while dealing with Section 25-G of the Act has held that in order to claim benefit envisaged under Section 25-G of the Act, the workman is not liable to prove continuous service of 240 days. Since the plea of management that workman had abandoned the job has not been established and that no objections had been raised about validity of reference for adjudication, workman who had been retrenched but had not worked for 240 days in preceding year was entitled for the protection under Section 25-G. In the case before this court, the plea of petitioner remains that several persons junior to him were still continuing with respondent and that he having joined earlier to them has not been retained by the department while retrenching him.

18. Most importantly, it is evident from mandays chart (RW1/B) relating to Daulat Ram (petitioner) that he was appointed/engaged in May, 2005 whereas (PW1/D) relating to Rey Chand showed that he got employed in the year 2005. (PW1/C) is the reply to the demand notice, who is shown to have worked with respondent department till 2005 and was appointed in May, 2005. As such, Rey Chand is shown to have joined in the year 2005 who had worked for 365 days and was also continuing as on date. As such, the petitioner had rightly contended that principle of 'Last come First go' was not followed. From the evidence of petitioner as well as statement of RW1, it can be safely inferred that Rey Chand was junior to petitioner and was working with the respondent department when petitioner was retrenched. Significantly, (RW1) has also admitted that petitioner was not called to join duties after his termination. It has also come in the evidence of respondent that the persons mentioned in (PW1/D1) namely Prem Singh, Tar Dei, Raj Kumar, Jeet Ram etc. were junior to the petitioner as certainly there is evidence on record to show that persons junior to petitioner were still working with the respondent/department.

19. Furthermore, the falsity of respondent's case further gets surfaced from its own plea as the respondent had maintained that petitioner was engaged for seasonal forestry work whereas at the same time respondent had engaged Rey Chand vide its mandays chart on record is shown to have remained employed from 2005 to 2012 exceeding 300 days in each year he worked. That being so, work of respondent/department could not be stated to be seasonal work in any manner. As such, plea of respondent that petitioner was engaged only for seasonal work and abandoned the job of his own respondent could not be accepted as true plea. Accordingly, respondent is held

to have violated the provisions of Section 25-G of the Act as has been held in judgment of our own Hon'ble High Court reported in 2013 (138) FLR 1051 titled as Paras Ram vs. Himachal Pradesh State Electricity Board Ltd., in which the Hon'ble High Court held that the junior workmen had been retained by the respondent retrenching petitioner/workman which is the violation of the provisions of Section 25-G of the Act.

20. Ld. Dy. D.A. for the State has also contended that petitioner is not entitled for any back wages as he was gainfully employed after being disengaged by respondent. In his claim petition as maintained that he has remained unemployed and not gainfully employed ever since his termination w.e.f. 1.10.2005 but in the witness box he has specifically admitted that he was gainfully employed and was earning from his agricultural pursuits. Since the plea of having been not gainfully employed gets belied from his inconsistent fact deposed in cross-examination, it would be unsafe to hold that petitioner was not gainfully employed. In the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324, the Hon'ble Apex Court has held that even earning from agricultural would be treated as gainful employment of workman and thus petitioner having remained gainfully employed, would not be entitled to back wages more so petitioner himself admits that he was earning his livelihood from agricultural activities. The petitioner thus shall be entitled for continuity in service and seniority. Issue in hand is accordingly answered in affirmative. Hence, issues no. 2 and 3 are answered accordingly.

ISSUE NO.4

21. Ld. Dy. D.A. has argued that claim petition since not maintainable. Perusal of the reply on record shows that neither any legal or fundamental rights of petitioner had ever been infringed. As has come in the evidence on record that the services of petitioner had been illegally terminated vide verbal order, I see no force in the arguments of Ld. Dy. D.A. as vague plea of denial of infringement of fundamental rights has been raised but the petitioner redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondent.

RELIEF

22. As a sequitor, to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

23. The reference is answered accordingly.

24. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to Record Room.

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 582/2015

Date of Institution : 04.12.2015

Date of Decision : 24.06.2017

Shri Inder Singh s/o Shri Bazira Ram, r/o Village Chatraina, P.O. Dharwar, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Inder Singh S/O Shri Bazira Ram, R/O Village Chatraina, P.O. Dhaar, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 16.06.2009 regarding his alleged illegal termination of services w.e.f. 08.7.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Inder Singh S/O Shri Bazira Ram, R/O Village Chatraina, P.O. Dharwar, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. w.e.f. 08.7.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that the petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 1.10.1998 where he continued to work upto 7.7.2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent w.e.f. 8.7.2005. It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of ‘Last come First go’ was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been

dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 22.1.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.1253/2013 which had been decided on 14.10.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors. reported in 2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner in the year 2005 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 who intermittently worked upto 8.7.2005. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B), copy of notice (RW1/C) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 23.4.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 16.6.2009 qua his termination of service w.e.f. 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of services of the petitioner by the respondent w.e.f. 8.7.2005 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.2,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the month of July, 2005 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who continued to work till 7.7.2005 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while

retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 326 days in the year 1999, 345 days in 2000, 330 days in 2001, 331 days in 2002, 333 ½ days in 2003, 292 days in 2004 and 181 days in 2005. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2005, petitioner has factually worked for 292 days in 2004 and 181 days in 2005 aggregating to 473 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 1999 till July, 2005 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2005 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 16.6.2009 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has

been pointed that termination of petitioner in this case took place on 8.7.2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Cou rt of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 59 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 2138 ½ days in seven years when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 4 ½ years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.2,00,000/- (Rupees two lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

22. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.2,00,000/- (Rupees two lakh only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 186/2016

Date of Institution : 26.03.2016

Date of Decision : 24.06.2017

Shri Mehar Chand s/o Shri Mahajan Ram, r/o Village and Post Office Baroti, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . Respondent.

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Shri Mehar Chand S/O Shri Mahajan Ram, R/O Village and Post Office Baroti, Tehsil Sarkaghat, District Mandi, H.P. during year, 2003 by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years vide demand notice dated 5.10.2010, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 1.3.1999 where he continued to work upto the year 2003 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2003 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 5.10.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.158/2016 which had been decided on 23.2.2016 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2003 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 3/1999 who intermittently worked upto July, 2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A), (PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant, copy of seniority list (PW1/D) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 3.12.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 5.10.2010 qua his termination of service during year 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of services of the petitioner by the respondent during year, 2003 is/was illegal and unjustified as alleged? . . .OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment

order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of March, 1999 on muster roll basis as beldar who continued to work till the year 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 246 days in the year 1999, 288 days in 2000 and 161 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 2001 petitioner has factually worked only for 161 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since March, 1999 till the year 2001. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Sections 25-F and 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim

petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 2.1.2012 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak

Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on November, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2007 H P 903 Hon'ble High Court of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 36 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 695 days in three years however demand notice was issued after a period of 7 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the

petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 188/2015

Date of Institution : 26.3.2016

Date of Decision : 24.06.2017

Shri Rajinder Pal s/o Shri Inder Singh, r/o Village Dharjoal, P.O. Brarta, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of Sh. Rajinder Pal S/o Sh. Inder Singh R/o Vill. Dharjoal, P.O. Brarta, Tehsil Sarkaghat, District Mandi, H.p. from 9/2000, by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. who had

worked as beldar on daily wages basis during the year 12/1998 to 9/2000, respectively and has raised his industrial dispute vide demand notice dated 16/4/2014 after more than 13 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during the year 12/1998 to 9/2000 and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 12/1998 where he continued to work upto the month of September, 2000 had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2001 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 16.4.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) ELR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 05/1999 who intermittently worked upto May, 2000. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It

is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant, copy of seniority list (PW1/D) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B), copy of notice (RW1/C) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 3.12.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 16.04.2014 qua his termination of service w.e.f. September, 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?** **..OPP.**
2. **Whether termination of services of the petitioner by the respondent during, September, 2000 is/was illegal and unjustified as alleged?** **..OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged?** **..OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the month of September, 2000 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of May, 1999 on muster roll basis as beldar who continued to work till May, 2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 30 days in the year 1999 and 14 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 1999 petitioner has factually worked only for 30 days and 14 days in 2000 aggregating to 44 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since May, 1999 till May, 2000. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such an action or omission on the

part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after May, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 16.6.2014 after about 14 years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206,

titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on May, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 47 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 44 days in two years however demand notice was issued after a period of 14 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

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

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 187/2016

Date of Institution : 26.03.2016

Date of Decision : 24.06.2017

Shri Lekh Raj s/o Shri Lachu Ram, P.O. Dev Brarta, Tehsil Sarkaghat, District Mandi, H.P. *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether alleged termination of services of Sh. Lek Raj S/o Sh. Lachu Ram Village chowk, P.O. Dev Brarta Tehsil Sarkaghat, Distt. Mandi, H.P. from 8/2000 by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. who had worked as beldar on daily wages basis during the year 6/2000 to 8/2000, respectively and has raised his industrial dispute vide demand notice dated 28/07/2014 after more than 14 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during year 6/2000 to 8/2000 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex- worker is entitled to from the above employer/Management?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1999 where he continued to work upto the month of August, 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the month of August, 2000 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2001 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 28.7.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the

delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of August, 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1999 who intermittently worked upto November, 2000. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A), (PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant, copy of seniority list (PW1/D) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 3.12.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 28.07.2014 qua his termination of service w.e.f. August, 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of services of the petitioner by the respondent during August, 2000 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

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

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the month of November, 2000 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of December, 1999 on muster roll basis as beldar who continued to work till November, 2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 194 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 2000 petitioner has factually worked only for 136 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since December, 1999 till November, 2000. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after November, 2000. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after November, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 2.1.2012 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery

Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra **Deshsewak Foundry** case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **Rashtriya Colliery** case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on November, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2007 HP 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 37 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 194 days in eight months however demand notice was issued after a period of 12 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation

of Rs.40,000/- (Rupees forty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

21. As a sequitor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 471/2015
Date of Institution : 29.10.2015
Date of Decision : 24.06.2017

Smt. Balo Devi w/o Shri Maan Singh, r/o Village Putlifald, P.O. Mandap, Sub Tehsil Dharampur, District Mandi, H.P. .Petitioner.

Versus

Executive Engineer, (B&R) Division, H.P.P.W.D. Dharampur, District Mandi, H.P.

. Respondent.

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

Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Smt. Balo Devi W/O Shri Maan Singh, R/O Village Putlifald, P.O. Mandap, Sub-Tehsil Dharampur, District Mandi, H.P. before the Executive Engineer, (B&R) Division, H.P.P.W.D. Dharampur, District Mandi, H.P. vide demand notice dated nil received in the Labour Office Mandi on dated 13-11- 2009 regarding her alleged illegal termination of services during September, 1999 suffers from delay and latches? If not, Whether termination of services of Smt. Balo Devi W/O Shri Maan Singh, R/O Village Putlifald, P.O. Mandap, Sub-Tehsil Dharampur, District Mandi, H.P. by the Executive Engineer, (B&R) Division, H.P.P.W.D. Dharampur, District Mandi, H.P. during September, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 1.4.1999 where she continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi in 6.4.2000, Inder Singh in 1.1.2000, Ajay Kumar in 1.12.2003, Pardeep Kumar in 23.11.2007, Lekh Raj in 11/2004 and Satya Devi in 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was

raised vide demand notice in the month of November, 2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3163/2015 which had been decided on 22.7.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 4/1998 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does

not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as (PW1) tendered/proved her affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved her affidavit (RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 15.3.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated nil qua her termination of service during September, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**

2. **Whether termination of the services of petitioner by the respondent w.e.f. September, 1999 is/was illegal and unjustified as alleged?** ..*OPP.*
3. **If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to?** ..*OPP.*
4. **Whether the claim petition is not maintainable in the present form as alleged?** ..*OPR.*

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1,2 AND 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which she has prayed for setting aside the retrenchment order in the year 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of April, 1998 on muster roll basis as beldar who continued to work till the September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 197 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in the year 1999 petitioner has factually worked only for 200 days and 197 days in 1999 in two years aggregating to 397 days prior

to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since April, 1998 till September, 1999. Be it noticed that Ajay Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. November, 12009 after about 10 years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not

come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as (PW1) has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination petitioner was not in government job and cross-examination of (PW1) reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra 2013 (5) SCC 136 has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in LHLJ 2007 HP 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was

condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 54 years when her services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 387 days in two years however demand notice was issued after a period of 10 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 46/2016

Date of Institution : 20.02.2016

Date of Decision : 24.06.2017

Shri Mohammad Khan s/o Shri Sunder Singh, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Mohammad Khan S/O Shri Sunder Singh, R/O Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 01.09.2009 regarding his alleged illegal termination of services during year 2003 suffers from delay and latches? If not, Whether termination of the services of Shri Mohammad Khan S/O Shri Sunder Singh, R/O Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. during year 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar during year 1998 where he continued to work upto the year 2003 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2003 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily

waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 1.9.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4047/2015 which had been decided on 8.10.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2003 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 2/1999 who intermittently worked upto June, 2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, copy of mandays chart of Shashi Kant (PW1/C), copy of seniority list (PW1/D) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 5.10.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 1.09.2009 qua his termination of service during year 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of services of the petitioner by the respondent during year 2003 is/was illegal and unjustified as alleged? . . .OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1999 on muster roll basis as beldar who continued to

work till the year 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 292 days in the year 1999, 318½ days in 2000 and 105 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 2000 petitioner has factually worked only for 318 ½ days and 105 days in 2001 aggregating to 423 ½ days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 1999 till 2001. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinnon Machenzie & Company Ltd. vs. Mackinnon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 1.9.2009 after about 6 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has

been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Cou rt of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 41 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 715 days in three years however demand notice was issued after a period of 6 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 590/2015
Date of Institution : 19.12.2015
Date of Decision : 24.06.2017

H.P. Shri Mahinder Singh s/o Shri Hira Lal, r/o VPO Brang, Tehsil Sarkaghat, District Mandi, . *Petitioner.*

Versus

H.P. Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Mahinder Singh S/O Shri Hira Lal, R/O V.P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. vide demand notice dated 18.08.2010 regarding his alleged illegal termination of services w.e.f. 08.7.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Mahinder Singh S/O Shri Hira Lal, R/O V.P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. w.e.f. 08.7.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that the petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 17.11.1998 where he continued to work upto 7.7.2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent w.e.f. 8.7.2005. It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of ‘Last come First go’ was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of

petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 18.8.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors. reported in 2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner in the year 2005 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto April, 2005 and retrenched on 8.7.2005. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant, copy of seniority list (PW1/D), copy of retrenchment notice (PW1/E) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 23.4.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 18.8.2010 qua his termination of service w.e.f. 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of services of the petitioner by the respondent w.e.f. 8.7.2005 is/was illegal and unjustified as alleged? . . .OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? . . .OPP.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.2,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the month of July, 2005 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till 7.7.2005 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder

Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 44 days in the year 1998, 333 ½ days in 1999, 350 days in 2000, 360 ½ days in 2001, 359 days in 2002, 342 ½ days in 2003, 288 days in 2004 and 104 days in 2005. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2005, petitioner has factually worked for 288 days in 2004 and 104 days in 2005 aggregating to 392 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 1999 till July, 2005 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2005 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after

July, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 16.6.2009 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 8.7.2005 and the industrial

dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Court of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 57 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 2137 days in seven years when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 5 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.2,00,000/- (Rupees two lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO. 4

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.2,00,000/- (Rupees two lakh only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 470/2015

Date of Institution : 29.10.2015

Date of Decision : 24.06.2017

Shri Lekh Raj s/o Shri Swanu Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat,
District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi,
H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Lekh Raj S/O Shri Swanu Ram, R/O Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 23.03.2013 regarding his alleged illegal termination of services during year 2001 suffers from delay and latches? If not, Whether termination of the services of Shri Lekh Raj S/O Shri Swanu Ram, R/O Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. during year, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 3.3.1999 where he continued to work upto the year 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from

between 2001 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.3.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3439/2015 which had been decided on 18.8.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of Raineet Singh vs. State of H.P. & Ors. reported in 2015 (145) FLR 722. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 03/1999 who intermittently worked upto October, 1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A), (PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant, copy of seniority list (PW1/D) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B), copy of notice (RW1/C) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 23.4.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 23.03.2013 qua his termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of services of the petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? . . .OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the month of October, 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of December, 1998 on muster roll basis as beldar who continued to work till October, 1999 when his services were terminated without

paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 194 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in October, 1999 petitioner has factually worked only for 194 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since March, 1999 till October, 1999. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after October, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 2.1.2012 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra 2013 (5) SCC 136 has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has

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

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 37 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 194 days in eight months however demand notice was issued after a period of 12 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO. 4

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

RELIEF

21. As a sequitor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 472/2015

Date of Institution : 29.10.2015

Date of Decision : 24.06.2017

Shri Prem Singh s/o Shri Panjak Ram, r/o Village Langehar, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Prem Singh S/O Shri Panjak Ram, R/O Village Langehar, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 02.01.2012 regarding his alleged illegal termination of services w.e.f. 08.7.2005 suffers from delay and latches? If not, Whether termination of the services of Shri Prem Singh S/O Shri Panjak Ram, R/O Village Langehar, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. w.e.f. 08.7.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that the petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 10.12.1998 where he continued to work upto 7.7.2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent w.e.f. 8.7.2005. It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of ‘Last come First go’ was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of

petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 18.6.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.3472/2015 which had been decided on 13.08.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors. reported in 2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner in the year 2005 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1998 who intermittently worked upto 8.7.2005. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant, copy of seniority list (PW1/D), copy of retrenchment notice (PW1/E) and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B), copy of notice (RW1/C) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 23.4.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 02.01.2012 qua his termination of service w.e.f. 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of services of the petitioner by the respondent w.e.f. 8.7.2005 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? ..OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.2,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the month of July, 2005 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of December, 1998 on muster roll basis as beldar who continued to work till 7.7.2005 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder

Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 34 days in the year 1998, 333 days in 1999, 347 days in 2000, 334 ½ days in 2001, 308 ½ days in 2002, 328 days in 2003, 293 days in 2004 and 123 days in 2005. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2005, petitioner has factually worked for 293 days in 2004 and 123 days in 2005 aggregating to 416 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 1998 till July, 2005 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2005 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinnon Machenzie & Company Ltd. vs. Mackinnon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after

July, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 2.1.2012 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra 2013 (5) SCC 136 has to be followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has

been pointed that termination of petitioner in this case took place on 8.7.2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Court of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 59 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 2093 days in eight years when he had already completed 240 days entitling him protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 4 ½ years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.2,00,000/- (Rupees two lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.2,00,000/- (Rupees two lakh only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 482/2015

Date of Institution : 09.11.2015

Date of Decision : 24.06.2017

Shri Sanjeev Kumar s/o Shri Balam Ram, r/o Village Morla, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Shri Sanjeev Kumar S/O Shri Balam Ram, R/O Village Morla, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 02.09.2010 regarding his alleged illegal termination of services during June, 2002 suffers from delay and latches? If not, Whether termination of the services of Shri Sanjeev Kumar S/O Shri Balam Ram, R/O Village Morla, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. during June, 2002 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

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

3. The germane facts for the disposal of the reference are thus that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. November, 1998 where he continued to work upto the month of June, 2002 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent vide verbal order in the month of June, 2002 without prior permission and one month's notice and retrenchment compensation envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2002 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.3.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4158/2015 which had been decided on 28.9.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of August, 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wagger on 11/1998 who intermittently worked upto June, 2002. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined (RW1) Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 15.3.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 2.09.2010 qua his termination of service during June, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.**
2. **Whether termination of services of the petitioner by the respondent during June, 2002 is/was illegal and unjustified as alleged? . . .OPP.**
3. **If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

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

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment

order in the month of June, 2002 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till June, 2002 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 39 days in the year 1998, 140 days in 1999, 188 days in 2000, 343 days in 2001 and 138 days in 2002. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 2001 petitioner has factually worked only for 343 days and 138 days in 2002 aggregating to 481 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since January, 2001 till June, 2002. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after June, 2002. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not

been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 2002 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 2.1.2012 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak

Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on November, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2007 H P 903 Hon'ble High Court of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 37 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 848 days in five years however demand notice was issued after a period of 5 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.90,000/- (Rupees ninety thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.90,000/- (Rupees ninety thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the

interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 319/2015

Date of Institution : 21.7.2015

Date of Decision : 24.06.2017

Smt. Deepi Devi w/o Shri Rupia Ram, r/o Village Banerdi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether the industrial dispute raised by the worker Smt. Deepi Devi W/O Shri Rupia Ram, R/O Village Banerdi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. vide demand notice dated 12.11.2009 regarding her alleged illegal termination of services w.e.f. 08.7.2005 suffers from delay and latches? If not, Whether termination of the services of Smt. Deepi Devi w/o Shri Rupia Ram, r/o

Village Banerdi, P.o. Pehad Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. w.e.f. 08.7.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. The germane facts for the disposal of the reference are thus that the petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 17.11.1998 where she continued to work upto 7.7.2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent w.e.f. 8.7.2005. It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Mamta Devi on 6.4.2000, Inder Singh on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not been given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 12.11.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.1257/2013 which had been decided on 27.05.2015 directed the Labour Commissioner, Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Ranjeet Singh vs. State of H.P. & Ors. reported in 2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner in the year 2005 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 who intermittently worked upto 7.7.2005. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised

demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as (PW1) tendered/proved her affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved her affidavit ((RW1/A), mandays chart (RW1/B), copy of notice (RW1/C) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 15.3.2016 for determination:

1. **Whether the industrial dispute raised by petitioner vide demand notice dated 12.11.2009 qua her termination of service w.e.f. 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.**
2. **Whether termination of services of the petitioner by the respondent w.e.f. 8.7.2005 is/was illegal and unjustified as alleged? ..OPP.**
3. **If issue no.1 or issue no. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.**
4. **Whether the claim petition is not maintainable in the present form as alleged? .. OPR.**

Relief.

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

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.2,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which she has prayed for setting aside the retrenchment order in the month of July, 2005 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who continued to work till 7.7.2005 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 337 days in the year 1999, 330 days in 2000, 334 days in 2001, 332 days in 2002, 350 days in 2003, 282 in 2004 and 90 days in 2005. Even if we look at the mandays chart, this would show that immediately preceding her termination in 2005, petitioner has factually worked for 282 days in 2004 and 90 days in 2005 aggregating to 380 days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had worked for more than 240 days ever since 1999 till July, 2005 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh appointed on 23.11.2007, Lekh Raj s/o Ram Saran appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment. Close scrutiny of the

petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 2007 to 2011 whereas petitioner had been retrenched in 2005 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed between 2007 to 2011 and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in 2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 12.11.2009 after about 4 ½ years and thus judgment of Hon'ble Apex Court reported in 2012 (1) SCC 285 titled as H.S. Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as (PW1) has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination petitioner was not in government job and cross-examination of (PW1) reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in 2016 (151) FLR 1039 titled as Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors., in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in 2014 LLR 967 titled as Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors., in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in 2017 (152) FLR 206, titled as Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (5) SCC 136, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra Deshsewak Foundry case, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in Rashtriya Colliery case cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case cited supra **2013 (5) SCC 136** has to be followed and applied.

18. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 8.7.2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **LHLJ 2 0 07 HP 903 Ho n'ble High Cou rt of H.P. (Bhatag Ram 's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 50 years when her services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 2055 days in seven years when she had already completed 240 days entitling her protection under Section 25-F of Industrial Disputes Act however demand notice was issued after a period of 4 ½ years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.2,00,000/- (Rupees two lakh only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.2,00,000/- (Rupees two lakh only) to the petitioner in

lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 112/2015

Date of Institution : 13.03.2015

Date of Decision : 24.06.2017

Shri Kashmir Singh s/o Shri Safria Ram, r/o Village Kharoh, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondent.*

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

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
dent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

“Whether termination of the services of Shri Kashmir Singh S/O Shri Safria Ram, R/O Village Kharoh, P.O. Sadhot, Tehsil Sarkaghat, District Mandi H.P. during

year 2001 by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P., without serving notice, charge sheet and without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

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

3. The germane facts for the disposal of the reference are thus that petitioner had been initially engaged by respondent on daily waged basis on muster roll as beldar w.e.f. December, 1998 where he continued to work upto the year 2001 who had completed 240 days. It is stated that on 1.12.2001, the petitioner was falsely implicated by the Police Station, Joginder Nagar an FIR No. 210 in criminal offence under Section 363, 366, 376 and 34 of IPC and the petitioner had remained under police remand as well as judicial custody and the said case of petitioner had been registered by the Id. Sessions Judge, Mandi as Session Trial No.10/2002 dated 24.4.2002 and thereafter the same had been decided on 28.10.2002 wherein petitioner was acquitted by the Id. Session Court, Mandi along-with other accused. It is alleged that after the acquittal of the petitioner, he had approached the Assistant Engineer, Sub Division Dharampur made several requests to provide him duties but the Assistant Engineer, HPPWD Dharampur has not accepted the request of petitioner. Thereafter, the petitioner has visited the office of District Attorney, Mandi in the month of December, 2002 whereas he came to know that State had filed Criminal Appeal against the judgment of Id. Sessions Court, Mandi before the Hon'ble High Court of Himachal Pradesh. Thereafter, the petitioner had again approached the office of the respondent and made request to provide him duties but of no avail. Averments made in the claim petition that on 27.10.2011 the Criminal Appeal No.41/2003 has been decided by the Hon'ble High Court of H.P. and upheld the judgment of Id. Sessions Court, Mandi without any inference. It is further stated that after receiving the copy of judgment of Hon'ble High Court of H.P. passed in Criminal Appeal No.41/2003, the petitioner once again made request for duties with the respondent but the respondent/department has refused the request of the petitioner and stated that at present no vacancy of daily wages basis is available with them. It is alleged that respondent had violated the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely Shasi Pal and Roshani Devi have been retained in service and their services have been regularized in the year 2008 whereas the services of petitioner had been dispensed with. It is alleged that the act of respondent not providing the duties to the petitioner after the acquittal from Id. Sessions Court, Mandi as well as Hon'ble High Court of H.P. onwards despite several requests made by the petitioner from time to time which was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947. It is further alleged that after the termination, he (petitioner) was still unemployed and not gainfully employed anywhere so the petitioner is entitled for full back wages. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The lis was resisted and contested on filing inter alia reply taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 6/2000 who worked under Sarkaghat Sub Division till June, 2001 and thereafter, the petitioner was transferred to Dharampur Division who had worked intermittently upto November, 2001 whereas the petitioner was arrested by the police department and at the same time he (petitioner) was absented from his duties. It is alleged that petitioner had not completed 240 days in any calendar year from the date of his initial engagement. It is further

alleged that petitioner has never approached the respondent after his arrest. It is alleged that there was no information to the respondent at the time of filing of Criminal Appeal No.41/2003 against the petitioner. It is further alleged that petitioner had never approached the respondent for providing duties to the petitioner. It is stated that at the time of retrenchment of surplus workers, the same was not stated to the petitioner. It is further stated that at the time of arrest of the petitioner, he never intimated the respondent/department regarding his arrest by the police. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The rejoinder has been filed while controverting the averments as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as (PW1) tendered/proved his affidavit under Order 18 Rule 4 CPC (PW1/A),(PW1/B) copy of RTI information dated 13.11.2013, (PW1/C) copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sudhir Mittal, the then Executive Engineer, HPPWD Division Dharampur as (RW1) tendered/proved his affidavit ((RW1/A), mandays chart (RW1/B) and closed the evidence.

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

8. On elucidating the pleading of parties at rival contentions raised before me, following issues were framed on 15.3.2016 for determination:

1. **Whether termination of services of the petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged?** **..OPP.**
2. **If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to?** **..OPP.**
3. **Whether the claim petition is not maintainable in the present form as alleged?** **.. OPR.**
4. **Whether the claim petition suffers from the vice of delay and laches as alleged?** **..OPP.**

Relief.

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

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1,2 AND 4

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

11. At the very outset, there is no denial to the factum that the claim petition before this Court was filed by the petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of June, 2000 on muster roll basis as beldar who continued to work till the year 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as the persons junior were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart (RW1/B) on record reveals that petitioner had worked for 184 days in the year 2000 and 228 ½ days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in the year 2001 petitioner has factually worked only for 228 ½ days prior to termination. A bare glance at the mandays chart (RW1/B) would reveal that petitioner had not worked for more than 240 days ever since June, 2000 till the month of June, 2001. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. It is particular to point out here that the plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as (RW1) has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. (RW1) specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Furthermore, as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that persons junior to the petitioner namely Shashi Pal and Roshani Devi were retained in service and they had been regularized in the year 2008 but no opportunity was given to petitioner for reemployment. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not been given any opportunity for reemployment. Since the persons mentioned in para 10 of claim petition as well as affidavit of petitioner (PW1/A) had been appointed and that respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act as has been held in judgment of Hon'ble Apex Court reported in **2015 (4) SCC 544 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted.

15. Ld. Authorized Representative for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice in the year 2012 after about 11 years and thus judgment of Hon'ble Apex Court reported in **2012 (1) SCC 285** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as (PW1) has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination petitioner was not in government job and cross-examination of (PW1) reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (5) SCC 136**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the

delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Most importantly, since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In cited supra *Deshsewak Foundry case*, Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in *Rashtriya Colliery case* cited supra Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in *Geetam Singh's case* cited supra **2013 (5) SCC 136** has to be followed and applied.

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

19. On elucidation of the above mentioned judgments that the petitioner had rendered service for seven years who was non-skilled worker ageing 36 years when his services were allegedly illegally terminated and not likely to get government job at this age and had factually worked for 412½ days in two years however demand notice was issued after a period of 11 years by the petitioner, but keeping in view peculiar facts and circumstances, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

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

RELIEF

21. As a sequittor to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

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

Announced in the open Court on this 24th day of June, 2017.

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

LAW DEPARTMENT**NOTICE**

Shimla-2, the 25th August, 2017

No. LLR-E(9)- 1/ 2017-Leg.-I.—Whereas, Ms. Aamna Begum, Advocate D/o Sh. Zahid Ali, R/o House No.117/5, Near Regency Resort, Anaj Mandi Road Shamshepur, Paonta Sahib, District Sirmour, H.P. has applied for appointment of Notary Public in Sub-Division Paonta Sahib of District Sirmour under rule 4 of the Notaries Rules, 1956.

Therefore, I undersigned in exercise of the power conferred vide Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in Rajpatra, H.P. against her appointment as a Notary Public in Sub-Division Paonta Sahib of District Sirmour.

(Competent Authority),
DLR-cum-Deputy Secretary (Law-English)
to the Government of Himachal Pradesh.

LAW DEPARTMENT**NOTICE***Shimla-2, the 26th August, 2017*

No. LLR-E(9)- 1/ 2017-Leg.-I.—Whereas, Smt. Vijayta Chauhan, Advocate W/o Shri Man Chand Negi, R/o VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. has applied for appointment of Notary Public in Sub-Division Kalpa of District Kinnaur under rule 4 of the Notaries Rules, 1956.

Therefore, I undersigned in exercise of the power conferred vide Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in Rajpatra, H.P. against her appointment as a Notary Public in Sub-Division Kalpa of District Kinnaur.

*(Competent Authority),
DLR-cum-Deputy Secretary (Law-English)
to the Government of Himachal Pradesh.*

LAW DEPARTMENT**NOTICE***Shimla-2, the 30th August, 2017*

No. LLR-E(9)- 1/ 2017-Leg.-I.—Whereas, Ms. Gulshan Ansari, Advocate D/o Shri M.L. Ansari, R/o H.No. 123/6, Y Point Shamsherpur, Paonta Sahib, District Sirmour, H.P. has applied for appointment of Notary Public in Sub-Division Paonta Sahib of District Sirmour under rule 4 of the Notaries Rules, 1956.

Therefore, I undersigned in exercise of the power conferred vide Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of five days from the date of publication of this notice in Rajpatra, H.P. against her appointment as a Notary Public in Sub-Division Paonta Sahib of District Sirmour.

*(Competent Authority),
DLR-cum-Deputy Secretary (Law-English)
to the Government of Himachal Pradesh*

**ब अदालत श्री मस्त राम बघाईक, कार्याकारी दण्डाधिकारी, चौपाल, जिला शिमला
(हिमाचल प्रदेश)**

श्री रविन्द्र कुमार पुत्र श्री कुन्दन सिंह, गांव बरकोली, डाकघर पुलबाहल, तहसील चौपाल, जिला शिमला, हिमाचल प्रदेश।

बनाम

- (1) आम जनता,
- (2) प्रधान ग्राम पंचायत जावग छमरोग, तहसील चौपाल, जिला शिमला।

विषय.—प्रार्थी के बच्चे का नाम व जन्म—तिथि ग्राम पंचायत जावग छमरोग के जन्म पंजीकरण रजिस्टर में दर्ज करवाए जाने बारे कि अधीन धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

हर खास व आम जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी श्री रविन्द्र कुमार पुत्र श्री कुन्दन सिंह गांव बरकोली, डाकघर पुलबाहल, तहसील, चौपाल ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन—पत्र प्रस्तुत किया है कि उसके बच्चे का नाम व जन्म तिथि ग्राम पंचायत जावग छमरोग के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है, अब प्रार्थी अपने बच्चे का नाम व जन्म तिथि ग्राम पंचायत जावग छमरोग के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहता है, जो कि निम्न प्रकार से है :—

क्रम संख्या	नाम	संबन्ध	जन्म तिथि
1	कृतिका मान्टा	पुत्री	23-07-2013

अतः आम जनता को बजरिया इश्तहार सूचित किया जाता है कि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो तारीख 11-09-2017 को या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करें अन्यथा आवेदन—पत्र पर जन्म पंजीकरण के आदेश पारित करके सचिव ग्राम पंचायत जावग छमरोग, को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 10-08-2017 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

मस्त राम बघाईक
कार्याकारी दण्डाधिकारी
चौपाल, जिला शिमला (हि0 प्र0)।

ब अदालत श्री विवेक नेगी, सहायक समाहर्ता प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला (हि0 प्र0)
मुकदमा नं0 : 21/2012 तारीख दायर : 07-03-2012

श्रीमती शान्ती देवी पुत्री श्री रुणपू निवासी गांव ज्यूरी, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)। वादी/प्रथम पक्ष।

बनाम

1. श्री योग राज पुत्र श्री कमला नन्द, निवासी गांव कोटला, डा0 ज्यूरी, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।
2. श्री विक्रम पुत्र श्रीमती कमलेश, निवासी गांव कोटला, तहसील रामपुर बुशैहर, जिला शिमला (हि0प्र0)।
3. श्री अनुपम पुत्र श्रीमती कमलेश, निवासी गांव कोटला, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।
4. श्रीमती नेहा पुत्री श्रीमती कमलेश, निवासी गांव कोटला, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

5. कुमारी पारूल पुत्री श्रीमती कमलेश, निवासी गांव कोटला, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।
6. श्रीमती करम दासी पुत्री श्री कालू, निवासी गांव मशनू, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

प्रतिवादी/द्वितीय पक्ष।

दरखास्त तकसीम जेरधारा 123 हि0 प्र0 भू0 रा0 अ0 1954 बाबत अराजी खाता/खतौनी नं0 25/83, खसरा नं0 1626, रकबा तादादी 00-06-37 है0, वाका चक त्यावल, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

नोटिस बनाम आम जनता :

प्रार्थिया श्रीमती शान्ती देवी पुत्री श्री रुणपू, निवासी गांव ज्यूरी, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) ने अराजी खाता/खतौनी नं0 25/83, खसरा नं0 1626, रकबा तादादी 00-06-37 है0, वाका चक त्यावल, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) की तकसीम दरखास्त इस अदालत में बराए हुकमन तकसीम गुजारी है। मिसल में तरीका तकसीम तक की कार्यावाही के उपरान्त प्रकरण गरदावर हल्का को मौका की तकसीम हेतु प्रेषित किया गया तथा मौका से गरदावर हल्का ने तकसीम करके प्रकरण इस अदालत को भेजा। वादी व प्रतिवादी को तकसीम की पुष्टि हेतु अपना-अपना पक्ष रखने हेतु तलब किया गया परन्तु प्रतिवादी नं0 1 ता 6 की तामील बार-बार समन जारी होने व इनका स्थाई निवास के बारे वादी को ज्ञान न होने के कारण इनकी तामील असालतन नहीं होनी पाई जा रही है। इसलिए इस अदालत को यकीन हो गया है कि इनकी तामील साधारण तरीके से होनी सम्भव नहीं है। अतः प्रतिवादी नं0 1 ता 6 को इस इशतहार द्वारा सूचित किया जाता है कि वे दिनांक 21-09-2017 को प्रातः 10.00 बजे असालतन या वकालतन पैरवी मुकदमा हेतु हाजिर अदालत आएँ हाजिर न आने की सूरत में यह समझा जाएगा की उपरोक्त खाता की तकसीम बारा उन्हें किसी भी प्रकार का एतराज नहीं है तथा एकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 22-08-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर

हस्ताक्षरित/
सहायक समाहर्ता प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

ब अदालत श्री विवेक नेगी, सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला (हि0 प्र0)
मुकदमा नं0 : 12/2017 तारीख दायर : 22-08-2017

श्रीमती रतन दासी पत्नि स्व0 श्री श्याम लाल, निवासी गांव शरन, डाकघर डन्सा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) वादी

बनाम

आम जनता

प्रतिवादी।

दरखास्त (नाम दरूस्ती) सेहत ईन्द्राज अराजी खाता/खतौनी नं0 88/242, कित्ता 2, रकबा तादादी 00-09-86 हैक्टेयर, वाका चक शनेरी, तहसील रामपुर बुशैहर, जिला शिमला, हि0 प्र0।

नोटिस बनाम आम जनता :

यह दरखास्त श्रीमती रतन दासी पत्नि स्व0 श्री श्याम लाल, निवासी गांव शरन, डा0 डन्सा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) ने इस आशय के साथ प्रस्तुत की है कि वादी का नाम मुताबिक ग्राम

पंचायत अभिलेख, आधार कार्ड, फोटो, बैंक खाता व अन्य दस्तावेज में रतन दासी दर्ज है जो सही व दुरुस्त है परन्तु अराजी खाता/खतौनी नं० 88/242, कित्ता 2, रकबा तादादी 00-09-86 हैक्टेयर, वाका चक शनेरी के खाना मालिक में वादी का नाम धैऊ देवी दर्शाया गया है, जो सही नहीं है। वादी उपरोक्त कागजात माल में अपना नाम धैऊ देवी के स्थान पर रतन दासी दुरुस्त/दर्ज करवाना चाहती है।

अतः इस इशतहार द्वारा सर्व साधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त वादी का नाम उपरोक्त अराजी के खाना मालिक में दुरुस्त/दर्ज करने बारे कोई आपति हो तो दिनांक 25-09-2017 को या इससे पूर्व अदालत हजा में हाजिर आकर अपनी आपति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार वादी का नाम दुरुस्त करने के आदेश पारित किए जाएंगे।

आज दिनांक 22-08-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

विवेक नेगी,
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत तहसीलदार, एवं कार्याकारी दण्डाधिकारी तहसील, चडगांव जिला शिमला (हि० प्र०)

अशवनी कुमार बनाम आम जनता।

दरखास्त जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969 हरगाह श्री अशवनी कुमार पुत्र श्री उदय, सिंह निवासी कलोटी, तहसील चडगांव, जिला शिमला, हि० प्र० ने दरखास्त गुजारी है कि वह अपने पुत्र श्री दिग्विजय ठाकुर पुत्री कु० सिमरन ठाकुर भतीजी कु० उजवल ठाकुर उपवन ठाकुर व भतीजा श्री सिद्धार्थ ठाकुर का नाम ग्राम पंचायत कलोटी के रजिस्टर दुरुस्त करवाना चाहता है।

अतः सर्व साधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस बारे यदि किसी व्यक्ति या रिश्तेदार को कोई उजर व एतराज हो तो वह अपना एतराज दिनांक 20-09-2017 को प्रातः 10 बजे अदालत में हाजिर आकर पेश कर सकता है। अन्यथा एक तरफा कार्यावाही अमल में लाई जाकर उपरोक्त नाम का इन्द्राज ग्राम पंचायत कलोटी के रिकार्ड में दर्ज करने के आदेश पारित कर दिए जाएंगे।

हस्ताक्षरित/—
कार्याकारी दण्डाधिकारी,
चडगांव तहसील चडगांव, जिला शिमला, हि० प्र०।

ब अदालत श्री नरोत्तम लाल, सहायक समाहर्ता द्वितीय श्रेणी, रेणुकाजी स्थित संगडाह,
जिला सिरमौर, हि० प्र०

मिसल नं० : 06/2017

तारीख पेशी : 22-09-2017

श्री धनी राम पुत्र श्री भगवान सिंह पुत्र चन्दन सिंह, निवासी दाना, तहसील रेणुकाजी, जिला सिरमौर, हि० प्र०।

बनाम

आम जनता/सगे सम्बन्धी

विषय.—दरखास्त बराये सेहतनामा।

उपरोक्त प्रार्थना पत्र श्री धनी राम पुत्र श्री भगवान सिंह पुत्र चन्दन सिंह, निवासी दाना, तहसील रेणुकाजी, जिला सिरमौर, हि0 प्र0 ने इस आशय के साथ गुजारा है कि उसका नाम धनी राम है जो कि शिक्षा विभाग, परिवार रजिस्टर व आधार कार्ड में सही दर्ज है परन्तु राजस्व रिकार्ड मौजा संगडाह में उसका नाम धनवीर सिंह दर्ज है जो कि गलत दर्ज है तथा जिसकी वह कागजात माल में दुरुस्ती करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 22-09-2017 को सुबह 10 बजे हमारी अदालत में उपस्थित होकर उजर/एतराज प्रस्तुत कर सकता है बाद गुजरने मियाद कोई उजर काबिले गौर न होगा तथा अदालत से नाम दुरुस्ती बारे आवश्यक आदेश पारित कर दिये जायेंगे।

आज दिनांक 19-08-2017 को हमारे हस्ताक्षर एवं मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
रेणुकाजी स्थित संगडाह, जिला सिरमौर, हि0 प्र0।

ब अदालत श्री राजेन्द्र ठाकुर, सहायक समाहर्ता प्रथम श्रेणी, रेणुकाजी स्थित संगडाह,
जिला सिरमौर, हि0 प्र0

मिसल नं0 : 04/2016

तारीख मरजुआ : 23-5-2016

तारीख पेशी : 20-09-2017

उनवान : जोगेन्द्र सिंह बनाम आम जनता

दरखास्त : सेहत नाम

आम इशतहार :

सायल उपरोक्त श्री जोगेन्द्र सिंह पुत्र श्री कांशी राम, निवासी शिवपुर, तहसील रेणुकाजी, जिला सिरमौर, हि0 प्र0 ने दरखास्त सेहत नाम इस आशय के साथ गुजारी है कि उसका नाम जोगेन्द्र सिंह जो कि पंचायत रिकार्ड व राशन कार्ड में सही दर्ज है परन्तु राजस्व रिकार्ड मौजा शिवपुर में उसका नाम जगत सिंह दर्ज है जो कि गलत दर्ज है तथा जिसकी वह राजस्व रिकार्ड मौजा शिवपुर में दुरुस्ती करवाना चाहता है।

अतः इस अदालती इशतहार के माध्यम से आम/सगे सम्बन्धियों को सूचित किया जाता है कि अगर वह मुकद्दमा उपरोक्त में कोई पैरवी करना चाहे तो वह हमारी अदालत में दिनांक 20-09-2017 को प्रातः 10 बजे अदालतन/वकालतन हाजिर आकर पैरवी मुकद्दमा कर सकते हैं। बाद गुजरने मियाद कोई उजर काबिले समायत न होगा तथा नियमानुसार आवश्यक आदेश पारित कर दिये जायेंगे।

आज दिनांक 18-08-2017 को हमारे हस्ताक्षर एवं मोहर अदालत से जारी किया गया।

मोहर।

राजेन्द्र ठाकुर,
सहायक समाहर्ता प्रथम श्रेणी,
रेणुकाजी स्थित संगडाह, जिला सिरमौर, हि0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री सुन्दर लाल पुत्र श्री रतन सिंह, निवासी बट्टीपुर, तहसील पांवटा साहिब, जिला सिरमौर

वादी।

बनाम

आम जनता

प्रतिवादी।

प्रकरण संख्या :

उनवान मुकदमा : प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री सुन्दर लाल पुत्र श्री रतन सिंह, निवासी बट्टीपुर, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना-पत्र प्रस्तुत करके निवेदन किया है कि किन्हीं कारणों से अपने पुत्र आयुष जिसकी जन्म तिथि 20-04-2005 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत/नगरपालिका परिषद् में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ-पत्र भी आवेदक ने अपने प्रार्थना-पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत/नगरपालिका परिषद् बट्टीपुर में अपने उपरवर्णित पुत्र की जन्म तिथि 20-04-2005 को दर्ज करने का अनुरोध किया है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को आयुष की जन्म तिथि ग्राम पंचायत/नगरपालिका परिषद् बट्टीपुर, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 22-09-2017 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त आयुष की जन्म तिथि को सम्बन्धित ग्राम पंचायत/नगरपालिका परिषद् में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 23-08-2017 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित/—

कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

ब अदालत श्री हरि सिंह राणा, हि0प्र0से0, अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल अधिकारी (ना0) पांवटा साहिब, जिला सिरमौर (हि0प्र0)

श्री सुनील कुमार पुत्र श्री महिन्द्र सिंह, निवासी ग्राम पुरुवाला कांशीपुर, तहसील पांवटा, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

1. सचिव ग्राम पंचायत पुरुवाला कांशीपुर, तहसील पांवटा साहिब
2. आम जनता।

प्रार्थना-पत्र जेरे धारा 8(4) के अन्तर्गत विवाह पंजीकरण बारे।

जैसा कि श्री सुनील कुमार पुत्र श्री महिन्द्र सिंह, निवासी ग्राम पुरुवाला कांशीपुर, तहसील पांवटा, जिला सिरमौर, हिमाचल प्रदेश ने प्रार्थना-पत्र मय शपथ पत्र प्रस्तुत किया है कि उसकी पूर्व पत्नी का देहान्त

24-7-2010 को हो चुका है तथा उसने पुनः विवाह श्रीमती उर्मिला पुत्री श्री जगमाल सिंह, निवासी ग्राम कोट बसवा, जिला यमुनानगर जिसके पूर्व पति का देहान्त भी 24-7-2016 को हो चुका है के साथ दिनांक 07-10-2016 को हुआ है तथा अज्ञानतावश ग्राम पंचायत पुरुवाल कांशीपुर, तहसील पांवटा साहिब के रिकार्ड में विवाह का पंजीकरण नहीं करवा सका है जिसे अब पंजीकरण करवाना चाहता है।

अतः इस सम्बन्ध में श्री सुनील कुमार पुत्र श्री महिन्द्र सिंह, निवासी ग्राम पुरुवाला कांशीपुर, तहसील पांवटा, जिला सिरमौर, हिमाचल प्रदेश हो तो दिनांक 28-09-2017 तक असालतन अथवा वकालतन अधोहस्ताक्षरी की अदालत में उपस्थित होकर प्रस्तुत कर सकता है। निर्धारित तिथि तक कोई एतराज प्राप्त न होने की सूरत में प्रार्थी का विवाह पंजीकरण एवं दर्ज करने के नियमानुसार आदेश पारित कर दिये जायेंगे।

आज दिनांक 28-08-2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हरि सिंह राणा (हि0प्र0से0),
अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल दण्डाधिकारी (ना0),
पांवटा साहिब, जिला सिरमौर (हि0प्र0)।

**In the Court of Shri H. S. Rana, H.A.S., Marriage Officer-cum-Sub Divisional Magistrate
Paonta Sahib, District Sirmaur, Himachal Pradesh**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT, 1954

In the matter of :

1. Shri Narinder Singh s/o Shri Jagmal Singh, r/o Village Patlion, Tehsil Paonta Sahib, District Sirmaur, H.P.
2. Smt. Heena Devi d/o Shri Satpal, r/o Village Kishnpura, Tehsil Paonta Sahib, District Sirmaur, H.P.

Versus

General Public

Application for the registration of Marriage under Section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Shri Narinder Singh s/o Shri Jagmal Singh, r/o Village Patlion, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Smt. Heena Devi d/o Shri Satpal, r/o Village Kishnpura, Tehsil Paonta Sahib, District Sirmaur, H. P. have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 on dated 26-08-2017 stating therein that they have been solemnized their marriage on 16-01-2017 at their residence Village Patlion, Paonta Sahib and they have living together as husband and wife ever since then. Hence notices are given to all concerend and general public to this effect that if any body have any objection regarding the registration of marriage duly solemnized on 16-01-2017 between Shri Narinder Singh s/o Shri Jagmal Singh, r/o Village Patlion, Tehsil Paonta Sahib, District Sirmaur, H. P. and Smt. Heena Devi d/o Shri Satpal, r/o Village Kishnpura, Tehsil Paonta Sahib, District Sirmaur, H. P. he should file written objections and appear personally or through an authorized agent before this court within 30 days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court.

Issued under my hand and office seal of this court on 26-08-2017.

Seal.

HARI SINGH RANA (HAS),
Marriage Officer-cum-Sub-Divisional Magistrate,
Paonta Sahib, District Sirmaur.

**In the Court of Shri H. S. Rana, H.A.S., Marriage Officer-cum-Sub Divisional Magistrate
Paonta Sahib, District Sirmaur, Himachal Pradesh**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT, 1954

In the matter of :

1. Shri Ajit Kumar Misara s/o Shri Jawahar Lal Mishra, r/o Shardha Colony Subhkhera, Tehsil Paonta Sahib, District Sirmaur, H.P.
2. Smt. Ranjana Guleria d/o Shri Kashmir Singh Guleria, r/o Shardha Colony, Subhkhera, Tehsil Paonta Sahib, District Sirmaur, H.P.

Versus

General Public

Application for the registration of Marriage under Section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Shri Ajit Kumar Misara s/o Shri Jawahar Lal Mishra, r/o Shardha Colony Subhkhera, Tehsil Paonta Sahib, District Sirmaur, H. P. and Smt. Ranjana Guleria d/o Shri Kashmir Singh Guleria, r/o Shardha Colony, Subhkhera, Tehsil Paonta Sahib, District Sirmaur, H.P. have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 on dated 18-08-2017 stating therein that they have been solemnized their marriage on 21-02-2015 at their residence Paonta Sahib and they have living together as husband and wife ever since then. Hence notices are given to all concerend and general public to this effect that if any body have any objection regarding the registration of marriage duly solemnized on 21-02-2015 between Shri Ajit Kumar Misara s/o Shri Jawahar Lal Mishra, r/o Shardha Colony Subhkhera, Tehsil Paonta Sahib, District Sirmaur, H. P. and Smt. Ranjana Guleria d/o Shri Kashmir Singh Guleria, r/o Shardha Colony, Subhkhera, Tehsil Paonta Sahib, District Sirmaur, H. P. he should file written objections and appear personally or through an authorized agent before this court within 30 days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court.

Issued under my hand and office seal of this court on 18-08-2017.

Seal.

HARI SINGH RANA (HAS),
Marriage Officer-cum-Sub-Divisional Magistrate,
Paonta Sahib, District Sirmaur.

**In the Court of Shri H. S. Rana, H.A.S., Marriage Officer-cum-Sub Divisional Magistrate
Paonta Sahib, District Sirmaur, Himachal Pradesh**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT, 1954

In the matter of :

1. Shri Rahul Chauhan s/o Shri Sushil Kumar, r/o Village Ganguwala, P. O. Jamniwala, Tehsil Paonta Sahib, District Sirmaur, H.P.
2. Smt. Nitika Sharma d/o Shri Rajesh Kumar, r/o Village Taruwala, Tehsil Paonta Sahib, District Sirmaur, H. P.

Versus

General Public

Application for the registration of Marriage under Section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Shri Rahul Chauhan s/o Shri Sushil Kumar, r/o Village Ganguwala, P. O. Jamniwala, Tehsil Paonta Sahib, District Sirmaur, H. P. and Smt. Nitika Sharma d/o Shri Rajesh Kumar, r/o Village Taruwala, Tehsil Paonta Sahib, District Sirmaur, H. P. have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 on dated 29-08-2017 stating therein that they have been solemnized their marriage on 15-01-2017 at their residence Devi Nagar, Paonta Sahib and they have living together as husband and wife ever since then. Hence notices are given to all concerend and general public to this effect that if any body have any objection regarding the registration of marriage duly solemnized on 15-01-2017 between Shri Rahul Chauhan s/o Shri Sushil Kumar, r/o Village Ganguwala, P. O. Jamniwala, Tehsil Paonta Sahib, District Sirmaur, H. P. and Smt. Nitika Sharma d/o Shri Rajesh Kumar, r/o Village Taruwala, Tehsil Paonta Sahib, District Sirmaur, H. P. he should file written objections and appear personally or through an authorized agent before this court within 30 days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court.

Issued under my hand and office seal of this court on 29-08-2017.

Seal.

HARI SINGH RANA (HAS),
*Marriage Officer-cum-Sub-Divisional Magistrate,
Paonta Sahib, District Sirmaur.*

