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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 5 अप्रैल, 2019 / 15 चैत्र, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 19th December, 2018

No. Shram(A)6-7/2018 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh.—

Sl. No.	Reference/ Application	Title	Section
1	156/2017	Ravinder Kumar V/s M/s Patel Engineering Limited, Shongtong, Kinnour.	10
2.	155/2017	Pawan Kumar V/s M/s Patel Engineering Limited, Shongtong, Kinnour.	10
3.	28/2017	Surjeet Singh V/s Ganga Dari Hydro Power (P) Limited.	10
4.	44/2017	Tehan Singh V/s Ganga Dari Hydro Power (P) Limited.	10
5.	120/2018	Anjana V/s Bal Kalyan Parishad, Shimla & Anr.	10
6.	17/2016	Khema Nand V/s The Executive Engineer, HPPWD, Division No.1, Winter Field, Shimla-3, H.P.	10
7.	30/2016	Nokhi Ram V/s The Executive Engineer, HPPWD, Division No.1, Winter Field, Shimla-3, H.P.	10
8.	16/2016	Daulat Ram The Executive Engineer, HPPWD, Division No.1, Winter Field, Shimla-3, H.P.	10
9.	115/2018	Sarwan Singh V/s The Commissioner, (D. C. Sirmour) Temple Trust, Trilokpur Distt. Sirmour, H.P.	10
10.	88/2018	Balwan Singh V/s The Commissioner, (D. C. Sirmour) Temple Trust, Trilokpur Distt. Sirmour, H.P.	10

By order,
NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

1-9-2018

Present: None for the petitioner.
Shri Mohit Vyas, Advocate vice Csl. for respondent.

It is 10.40 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner.
Shri Mohit Vyas, Advocate vice Csl. for respondent.

It is 12.40 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH

Present: None for the petitioner.
Shri Mohit Vyas, Advocate vice Csl. for respondent.

It is 3.40 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether termination of services of Shri Ravinder Kumar s/o Shri Jar Bhag (Card No. 179, Log Keeper) r/o Village Tangling, P.O Shongtong, Tehsil Kalpa, District Kinnaur, HP by the General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 18-3-2016, allegedly 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 ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 18-3-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 18-3-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-9-2018.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

1-9-2018

Present: None for the petitioner.
Shri Mohit Vyas, Advocate vice Csl. for respondent.

It is 10.45 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner.
Shri Mohit Vyas, Advocate vice csl. for respondent.

It is 12.45 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH.

Present: None for the petitioner.

Shri Mohit Vyas, Advocate vice csl. for respondent.

It is 3.45 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether termination of services of Shri Pawan Kumar s/o Shri Dev Bhagti r/o Village & P.O Khawangi, Tehsil Kalpa, District Kinnaur, HP by the General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 18-3-2016, allegedly 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 ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 18-3-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 18-3-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-9-2018.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

1-9-2018

Present: None for the petitioner.
Shri Malkeeyat Singh, Advocate vice Csl. for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10:30 AM. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner.
Shri Malkeeyat, Advocate vice csl. for respondent.

It is 12.35 PM. Case called again but neither the petitioner nor his counsel has appeared before this Court. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH

1-9-2018

Present: None for the petitioner.
Shri Malkeeyat Singh, Advocate vice csl. for respondent.

It is 3.35 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel had appeared before this Court. For today, the case has been listed for filing of rejoinder on behalf of the petitioner but neither the petitioner nor his Advocate has put in appearance before this Court in order to file the rejoinder despite the fact that the petitioner had availed several opportunities to file the same. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

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

“Whether demand of Shri Surjeet Singh s/o Shri Gian Singh r/o Village & P.O Munish Bahali, Tehsil Rampur, District Shimla regarding his re-engagement in service before the management of M/s Ganga Dhari Hydro Power Pvt. Ltd., Gamba House South End, Lane-IV, Phase-1 New Shimla 171009 (Site office M/s Ganga Dhari Hydro Power Pvt. Ltd., Village Jongi, P.O Munish Bahali, Tehsil Rampur, District Shimla) after getting his full & final dues is legal and justified? If yes, what relief the above workman is entitled to from the above management?”

In the statement of claim filed by the petitioner he prayed that the termination orders dated 31-3-2014 be quashed and his services be reinstated retrospectively with all consequential benefits including continuity in service, full back-wages etc. By filing reply, the respondent contested the claim filed by the petitioner and prayed for the dismissal of the claim petition. From the aforesaid reference it is clear that the petitioner has raised the demand regarding his re-engagement after taking full and final dues from the respondent. The petitioner has failed to appear before this Court and to produce any material in support of his claim which shows that he is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced
1-9-2017.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

1-9-2018

Present: None for the petitioner.
Shri Malkeeyat Singh, Advocate vice Csl. for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10.35 AM. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner.
Shri Malkeeyat, Advocate vice Csl. for respondent.

It is 12.30 PM. Case called again but neither the petitioner nor his counsel has appeared before this Court. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH

1-9-2018

Present: None for the petitioner.
Shri Malkeeyat Singh, Advocate vice Csl. for respondent.

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel had appeared before this Court. For today, the case has been listed for filing of rejoinder on behalf of the petitioner but neither the petitioner nor his Advocate has put in appearance before this Court in order to file the rejoinder despite the fact that the petitioner had availed several opportunities to file the same. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

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

“Whether demand of Shri Tehan Singh s/o Shri Partap Singh r/o Village Roon, P.O Munish Bahali, Tehsil Rampur, District Shimla regarding his re-engagement in service before the management of M/s Ganga Dhari Hydro Power Pvt. Ltd., Gamba House South End, Lane-IV, Phase-1 New Shimla 171009 (Site office M/s Ganga Dhari Hydro Power Pvt. Ltd., Village Jongi, P.O Munish Bahali, Tehsil Rampur, District Shimla) after getting his full & final dues is legal and justified? If yes, what relief the above workman is entitled to from the above management?”

In the statement of claim filed by the petitioner he prayed that the termination orders dated 31-3-2014 be quashed and his services be reinstated retrospectively with all consequential benefits including continuity in service, full back-wages etc. By filing reply, the respondent contested the claim filed by the petitioner and prayed for the dismissal of the claim petition. From the aforesaid reference it is clear that the petitioner has raised the demand regarding his re-engagement after taking full and final dues from the respondent. The petitioner has failed to appear before this Court and to produce any material in support of his claim which shows that he is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this

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

Announced:
1-9-2017.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

11-9-2018

Present: None for the petitioner.
Ms. Sushma Sharma, Advocate vice Csl. for respondent No. 1.
Shri Mahender Singh, ADA for respondent No. 2.

As per the Track Consignment report the notice issued to the petitioner has been duly served. It is 10.45 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner.
Ms. Sushma Sharma, Advocate vice Csl. for respondent No. 1.
Shri Mahender Singh, ADA for respondent No. 2.

It is 12.50 PM. Case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Ms. Sushma Sharma, Advocate vice Csl. for respondent No. 1.
Shri Mahender Singh, ADA for respondent No. 2.

It is 3.20 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any counsel on her behalf has appeared before this Court. For today, the case has been listed for the service of the petitioner but as per track consignment report, despite having been served none appeared before this Court which clearly shows that the petitioner is not interested to pursue this

case arising out of the reference. Therefore, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

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

“Whether termination of services of Smt. Anjana w/o Shri Raj Kumar r/o Mohalla Rani Taal, 44/8, Tehsil Nahan, District Sirmour, HP by the General Secretary Bal Kalyan Parishad, HP Kraig Garden, Shimla-2 (HP) w.e.f. 31-5-2017 without complying with the provisions of the Industrial Disputes Act 1947 is legal and justified? If not, what relief including reinstatement amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference is the clear that the petitioner has alleged her termination of services w.e.f. 31-5-2017 to be illegal and unjustified but despite having been served, the petitioner has failed to appear before this Court. Since, the petitioner has failed to appear before this Court and to file statement of claim, therefore, in the absence of any material on record, it cannot be said that the termination of the services of the petitioner w.e.f. 31-5-2017 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified. Hence, the reference is answered in the negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
11-9-2018

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

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

Ref. No. : 17 of 2016
Instituted on : 15-3-2016
Decided on : 4-9 -2018

Khema Nand s/o Shri Thumru Ram, aged about 42 years, presently unemployed, r/o Village Kotli, P.O. Guma, Tehsil & District Shimla, H.P. . *Petitioner.*

Vs.

The Executive Engineer, H.P.P.W.D, Division No. 1, Winter Field, Shimla-3, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Hitender Thakur, Advocate Vice Csl.

For respondent : Shri Mahinder Singh, ADA.

AWARD

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

“Whether alleged termination of services of Shri Khema Nand s/o Late Shri Thumru Ram, r/o Village & P.O. Gumma, Tehsil & Distt. Shimla, H.P. during August, 1997 by the Executive Engineer, H.P.P.W.D. Division No.1, Shimla-3, who had worked as beldar on daily wages only for 97 days in 1997 and has raised his industrial dispute after about 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 97 days in 1997 and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially in the month of Jan., 1997, he was engaged as daily wage beldar by the respondent and worked as such till December, 1998 when his services were terminated verbally on the pretext of insufficient work by asking him not to come to the work from the next day. It is further stated that at the time of his termination, the petitioner was assured by the respondent that as and when the work would be available in the respondent department, he will be called on priority basis and would be provided work in the department and the petitioner under hope did not prefer to raise any dispute qua his illegal termination till March, 2013 when he found his re-engagement impossible and then issued a demand notice to the respondent. It is also stated that the services of the petitioner were orally terminated on 31st December, 1998 without assigning any reason and even some new persons are working on the same posts and persons junior to him S/Shri Ram Parkash, Shobha Ram, Lalit and Joginder etc. have been retained by the respondent department which is against the mandatory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against this back-drop a prayer has been made that the termination order dated 31-12-1998 be quashed and the respondent be ordered to re-engage the petitioner with full back-wages and interest @ 18% and all other consequential benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, limitation, abandonment etc. On merits, it has been asserted that the petitioner was initially engaged as daily waged beldar in the year 5/1997 under Kasumpti Sub Division HPPWD Dhalli and he has worked intermittently upto 9/1998. It is denied that the services of the petitioner were terminated due to insufficient work. It is asserted that the petitioner had left the job at his own without intimation and now after a gap of 15 years he has raised the issue, hence, there is no question of violation of provisions of section 25-F, 25-G and 25-H of the Act. That the petitioner had failed to complete 240 days in each calendar year. It is asserted that the department was having sufficient work to execute and sufficient funds at that time and the department had engaged workers on availability of vacant posts at that time as well as appointed workers on compassionate grounds keeping in view the vacancy with the department but the same was not applicable to the petitioner as he himself had left the job at his own. The respondent prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed on 21-5-2018.

1. Whether the termination of the services of the petitioner by the respondent during August, 1997 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP*.
3. Whether the petition is not maintainable as alleged? . . .*OPR*.
4. Whether the petition is barred by limitation as alleged? . . .*OPR*.
5. Relief.
6. I have heard the learned counsel for the petitioner and Ld. ADA for respondent and also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No.

Issue No. 2 : Becomes redundant.

Issue No. 3 : No.

Issue No. 4 : Yes.

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

REASONS FOR FINDINGS

Issues No. 1 & 4 :

8. Being interlinked and co-related both these issues are taken up together for discussion and decision.

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

10. On the other hand, learned ADA for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner have never been terminated by the respondent who had left the job at his own without any intimation to the respondent. He also contended that the petitioner had not completed 240 days in any calendar year and no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was engaged in May, 1997. He denied that he had worked till September, 1998. He further denied that he had left the job at his own. He also denied that he had not completed 240 days in any calendar year. He denied that no junior persons have been retained. He admitted that he had raised the demand notice after a period of 19 years.

12. PW-2 Shri Ghan Shyam, Junior Assistant of respondent deposed as per record that Shri Ram Prakash was engaged as beldar in March, 1997, Shobha Ram in Feb., 1997, Lalit in August, 1997 and Joginder was engaged in August, 1997 and all of them are still working with the department. In cross-examination, he admitted that the aforesaid four persons namely Shobha Ram, Ram Prakash, Lalit and Joginder are working continuously with the department. He further admitted that the petitioner left the job at his own in September, 1998. He also admitted that the petitioner had not completed 240 days in any calendar year.

13. On the other hand, the respondent has examined one Shri Surjeet Singh, Assistant Engineer as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B and mandays chart Ex. RW-1/C. In cross-examination, he denied that the petitioner was engaged in Jan., 1997. He further denied that the petitioner remained continuous in service without any break. He admitted that the department had never issued any letter/warning to the petitioner for resumption of his duties. He denied that the petitioner had not left the job at his own rather the department had terminated his services. He further denied that the services of the petitioner were terminated on the assurance that he would be re-instated. He also denied that the services of the petitioner were terminated on 31-12-1998. He denied that the petitioner had completed 240 days in each calendar year. He further denied that Ram Prakash, Shobha Ram, Joginder and Lalit were juniors to the petitioner and they are still in service.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent *w.e.f.* May/1997 till September/1998 which fact is evident from the Mandays chart of the petitioner Ex. RW-1/C. No doubt, the case of the petitioner is that he had worked with the respondent till 31-12-1998 but to this effect no evidence has been led by him which could go to show that he had worked with the respondent till 31-12-1998. From the perusal of Mandays chart Ex. RW-1/C it is also clear that the petitioner had worked for 97 days in the year 1997 and for 10 days in the year, 1998 meaning thereby that he had not completed 240 days in any calendar year and in twelve calendar months preceding his alleged termination. It is also clear from the record that the petitioner has raised the present dispute after a lapse of 15 years. Now, the question which arises for consideration before this Court is as to whether the claim filed by the petitioner is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Therefore, the position of law in respect of a stale claim is required to be seen.

15. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* 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, must be invariably followed.”

16. In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon’ble Apex Court has held as under:

“Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit Vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand.”

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

17. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon’ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon’ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. “In *Ajaib Singh (supra)*, the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or

even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib Singh (supra)*, but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.”

14. “The decision of *Ajaib Singh (supra)* must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, JT 2005 (1) SC 303], and *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.* para 42.”

15. "In *Balbir Singh Vs. Punjab Roadways and Another* [(2001) 1 SCC 133], as regard *Ajaib Singh (supra)*, this Court observed :

5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of *Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).

6. “We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.”

16. “Yet again in *Assistant Executive Engineer, Karnataka Vs. Shivalinga* [(2002) 10 SCC 167], a Bench of this Court observed :

“6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may

be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In *Nedungadi Bank Ltd. (supra)*, a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in *Ajaib Singh (supra)*], opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (Emphasis supplied).

18. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

19. In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30% back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

“9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.....

20. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

“ 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent”.

21. In **(2015) 15 SCC 1 titled as Prabhakar Vs. Joint Director Sericulture Department and Anr.**, it has been held by the Hon’ble Supreme Court that policy of industrial adjudication is to be kept in mind that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers, financial arrangement and to avoid dislocation of an industry. The relevant paras of the aforesaid judgment are reproduced as under:

“38. It is now a well-recognized principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of lached is in fact an application of maxim of equity “delay defeats equities”.

39. This principle is applied in those cases where discretionary orders of the court are claimed, such as specific performance, permanent or temporary injunction, appointment of Receiver, etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of the Constitution of India. In such cases, courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to court within the period prescribed by the Limitation Act.

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44. To summarise, although here is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers, financial arrangement and to avoid dislocation of an industry.

45. On the application of the aforesaid principle to the facts of the present case, we are of the view that High Court correctly decided the issue holding that the reference at such a belated stage i.e. after fourteen years of termination without any justifiable explanation for delay, the appropriate Government had no jurisdiction or power to make reference of a non-existing dispute”.

22. In a recent judgment of our Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as **Bego Devi Versus State of HP and others** decided on 26-10-2016, it has been held as under:—

“9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position”.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* September, 1998 and he raised the present dispute after a period of more than 15 years. But the petitioner has failed to explain the delay of 15 years in raising the industrial dispute as no evidence in this respect has been placed on record by the petitioner. Rather, he had kept silent and had not taken any steps to raise the dispute qua his alleged termination for the period of about 15 years. Therefore, the claim is highly stale and belated and is not maintainable and liable to be dismissed on the ground of delay in raising the dispute.

24. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

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

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

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

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. Rather the mandays chart Ex. RW-1/C shows that the petitioner had worked only for a period of 97 days in the year 1997 and for 10 days in the year 1998. No evidence to the contrary has been led by the petitioner that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

25. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working as such the respondent had violated the principles of “last come first go”. However, no satisfactory evidence has been led by the petitioner to this effect. PW-2 deposed that Ram Prakash was engaged as beldar in March, 1997, Shobha Ram in Feb., 1997, Lalit and Joginder in August, 1997 and in cross examination he stated that the petitioner was engaged in May 1997. From the statement of PW-2 it is revealed that Lalit and Joginder were engaged after the petitioner. However, in cross examination PW-2 admitted that the petitioner had not completed 240 days in any calendar year and he had left the job at his own whereas Lalit and Joginder had been working continuously with the department. Therefore, the petitioner cannot claim equal treatment with his junior persons *i.e* Lalit and Joginder who had been working continuously with the department. Moreover, as observed earlier, the petitioner had raised the present dispute after a period of 15 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 15 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner.

26. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the present dispute after a lapse of about 15 years as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2 :

27. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 3:

28. In support of this issue, no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

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

Announced in the open Court today on this 4th day of September, 2018.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

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

Ref. No. 30 of 2016
Instituted on 15-3-2016

Decided on 4-9 -2018

Nokhi Ram s/o Shri Thumru Ram aged about 38 years, presently unemployed, r/o Village Kotli, P.O. Guma, Tehsil & District Shimla, H.P. . *Petitioner.*

Vs.

The Executive Engineer, H.P.P.W.D, Division No.1, Winter Field, Shimla-3, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Hitender Thakur, Advocate Vice Csl.

For respondent : Shri Mahinder Singh, ADA.

AWARD

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

“Whether alleged termination of services of Shri Nokhi Ram s/o Late Shri Thumru Ram, r/o Village & P.O. Gumma, Tehsil & Distt. Shimla, H.P. during August, 1998 by the Executive Engineer, H.P.P.W.D. Division No.1, Shimla-3, who had worked as beldar on daily wages only for 59 days and 193 days in 1997 & 1998 respectively and has raised his industrial dispute after about 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 59 days and 193 days in 1997 & 1998 and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially in the month of Jan., 1997, he was engaged as daily wage beldar by the respondent and worked as such till December, 1998 when his services were terminated verbally on the pretext of insufficient work by asking him not to come to the work from the next day. It is further stated that at the time of his termination, the petitioner was assured by the respondent that as and when the work would be available in the respondent department, he will be called on priority basis and would be provided work in the department and the petitioner under hope did not prefer to raise any dispute qua his illegal termination till March, 2013 when he found his re-engagement impossible and then issued a demand notice to the respondent. It is also stated that the services of the petitioner were orally terminated on 31st December, 1998 without assigning any reason and even some new persons are working on the same posts and persons junior to him S/Shri Ram Parkash, Shobha Ram, Lalit and Joginder etc. have been retained by the respondent department which is against the mandatory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against this back-drop a prayer has been made that the termination order dated 31-12-1998 be quashed and the respondent be ordered to re-engage the petitioner with full back-wages and interest @ 18% and all other consequential benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, limitation, abandonment etc. On merits, it has been asserted that the petitioner was initially engaged as daily waged beldar in the year 9/1997 under Kasumpti Sub Division HPPWD Dhalli and he has worked intermittently upto 8/1998. It is denied that the services of the petitioner were terminated due to insufficient work. It is asserted that the petitioner had left the job at his own without intimation and now after a gap of 15 years he has raised the issue, hence, there is no question of violation of provisions of section 25-F, 25-G and 25-H of the Act. That the petitioner had failed to complete 240 days in each calendar year. It is asserted that the department was having sufficient work to execute and sufficient funds at that time and the department had engaged workers on availability of vacant posts at that time as well as appointed workers on compassionate grounds keeping in view the vacancy with the department but the same was not applicable to the petitioner as he himself had left the job at his own. The respondent prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed on 21-5-2018.

1. Whether the termination of the services of the petitioner by the respondent during August, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*

-
3. Whether the petition is not maintainable as alleged? . . . *OPR.*
4. Whether the petition is barred by limitation as alleged? . . . *OPR.*
5. Relief.

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

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

Issue No. 1 : No.

Issue No. 2 : Becomes redundant

Issue No. 3 : No.

Issue No. 4 : Yes.

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

REASONS FOR FINDINGS

Issues No. 1 & 4 :

8. Being interlinked and co-related both these issues are taken up together for discussion and decision.

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

10. On the other hand, learned ADA for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner have never been terminated by the respondent who had left the job at his own without any intimation to the respondent. He also contended that the petitioner had not completed 240 days in any calendar year and no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he was engaged in the year 1997. He denied that he had worked till August, 1998. He further denied that he had left the job at his own. He also denied that he had not completed 240 days in any calendar year. He denied that no junior persons have been retained. He admitted that he had raised the demand notice after a period of 19 years.

12. PW-2 Shri Ghan Shyam, Junior Assistant of respondent deposed as per record that Shri Ram Prakash was engaged as beldar in March, 1997, Shobha Ram in Feb., 1997, Lalit in August, 1997 and Joginder was engaged in August, 1997 and all of them are still working with the department. In cross-examination, he admitted that the aforesaid four persons namely Shobha Ram, Ram Prakash, Lalit and Joginder are working continuously with the department. He further admitted that the petitioner left the job at his own in September, 1998. He also admitted that the petitioner had not completed 240 days in any calendar year.

13. On the other hand, the respondent has examined one Shri Surjeet Singh, Assistant Engineer as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B and mandays chart Ex. RW-1/C. In cross-examination, he denied that the petitioner was engaged in Jan., 1997. He further denied that the petitioner remained continuous in service without any break. He admitted that the department had never issued any letter/warning to the petitioner for resumption of his duties. He denied that the petitioner had not left the job at his own rather the department had terminated his services. He further denied that the services of the petitioner were terminated on the assurance that he would be re-instated. He also denied that the services of the petitioner were terminated on 31-12-1998. He denied that the petitioner had completed 240 days in each calendar year. He further denied that Ram Prakash, Shobha Ram, Joginder and Lalit were juniors to the petitioner and they are still in service.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent *w.e.f.* September/1997 till August/1998 which fact is evident from the Mandays chart of the petitioner Ex. RW-1/C. No doubt, the case of the petitioner is that he had worked with the respondent till 31-12-1998 but to this effect no evidence has been led by him which could go to show that he had worked with the respondent till 31-12-1998. From the perusal of Mandays chart Ex. RW-1/C it is also clear that the petitioner had worked for 83 days in the year 1997 and for 192 days in the year, 1998. It is also clear from the record that the petitioner has raised the present dispute after a lapse of 15 years. Now, the question which arises for consideration before this Court is as to whether the claim filed by the petitioner is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Therefore, the position of law in respect of a stale claim is required to be seen.

15. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* 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, must be invariably followed.”

16. In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

“Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand.”

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

17. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. “In *Ajaib Singh (supra)*, the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not.

Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib Singh (supra)*, but it does not mean that irrespective of

facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.”

14. “The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42.”

15” In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *Vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054: JT (1999) 3 SC 38).

6. “We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.”

16. “Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

“6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *Vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *Vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the

situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In *Nedungadi Bank Ltd. (supra)*, a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in *Ajaib Singh (supra)*], opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (Emphasis supplied).

18. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram**, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

19. **In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.....

20. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

“ 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent.”

21. In **(2015) 15 SCC 1** titled as **Prabhakar Vs. Joint Director Sericulture Department and Anr.**, it has been held by the Hon’ble Supreme Court that policy of industrial adjudication is to be kept in mind that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers, financial arrangement and to avoid dislocation of an industry. The relevant paras of the aforesaid judgment are reproduced as under:

“38. It is now a well-recognized principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of lached is in fact an application of maxim of equity “delay defeats equities”.

39. This principle is applied in those cases where discretionary orders of the court are claimed, such as specific performance, permanent or temporary injunction, appointment of Receiver, etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of the Constitution of India. In such cases, courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to court within the period prescribed by the Limitation Act.

40.

41.

42.

43.

44. To summarise, although here is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers, financial arrangement and to avoid dislocation of an industry.

45. On the application of the aforesaid principle to the facts of the present case, we are of the view that High Court correctly decided the issue holding that the reference at such a belated stage *i.e.* after fourteen years of termination without any justifiable explanation for delay, the appropriate Government had no jurisdiction or power to make reference of a non-existing dispute”.

22. In a recent judgment of our Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as **Bego Devi Versus State of H.P. and others decided on 26-10-2016**, it has been held as under:

“9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross Therefore, the claim is highly stale and belated and is liable to be dismissed on the ground of delay in raising the dispute.

24. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working as such the respondent had violated the principles of “last come first go”. However, no evidence has been led by the petitioner to this effect. PW-2 deposed that Ram Prakash was engaged as beldar in March, 1997, Shobha Ram in Feb., 1997, Lalit and Joginder in August, 1997 and in crossexamination he stated that the petitioner was engaged in September, 1997. Therefore, from the statement of PW-2 it is clear that S/Shri Ram Prakash, Shobha Ram, Lalit and Joginder were engaged prior to the petitioner as such it cannot be said that these persons were juniors to the petitioner. No other evidence has been led by the petitioner that the respondent had retained his juniors and engaged fresh hands. Therefore, in the absence of any evidence, no protection of section 25-G & 25-H of the Act can be granted to the petitioner. Moreover, since the petitioner had raised the present dispute after a period of 15 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 15 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. The learned counsel for the petitioner next contended that since the petitioner had completed 240 days in preceding 12 months prior to his termination, therefore, the respondent had violated the provisions of section 25-F of the Act. However, as observed earlier, since the petitioner has raised the present dispute after a period of 15 years as such no protection of section 25-F can be granted to the petitioner.

25. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the present dispute after a lapse of about 15 years as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2 :

26. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 3 :

27. In support of this issue, no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

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

Announced in the open Court today on this 4th day of September, 2018.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

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

Ref. No. : 16 of 2016

Instituted on : 15-3-2016

Decided on : 4-9 -2018

Daulat Ram s/o Shri Charan Dass aged about 45 years, presently unemployed, r/o Village Sanyana, P.O. Thela, Tehsil & District Shimla, H.P. . *Petitioner.*

Vs.

The Executive Engineer, H.P.P.W.D, Division No.1, Winter Field, Shimla-3, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Hitender Thakur, Advocate Vice Csl.
For respondent : Shri Mahinder Singh, ADA.

AWARD

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

“Whether alleged termination of services of Shri Daulat Ram s/o Shri Charan Dass r/o Village Sanyan, P.O Thaila, Tehsil Sunni, District Shimla H.P. during August, 1998 by the Executive Engineer, H.P.P.W.D. Division No.1, Shimla-3, who had worked as beldar on daily wages only for 147 days and 209 days in 1997 & 1998 respectively and has raised his industrial dispute after about 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 147 days and 209 days in 1997 & 1998 respectively and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially in the month of Jan., 1997, he was engaged as daily waged beldar by the respondent and worked as such till December, 1998 when his services were terminated verbally on the pretext of insufficient work by asking him not to come to the work from the next day. It is further stated that at the time of his termination, the petitioner was assured by the respondent that as and when the work would be available in the respondent department, he will be called on priority basis and would be provided work in the department and the petitioner under hope did not prefer to raise any dispute qua his illegal termination till March, 2013 when he found his re-engagement impossible and then issued a demand notice to the respondent. It is also stated that the services of the petitioner were orally terminated on 31st December, 1998 without assigning any reason and even some new persons are working on the same posts and persons junior to him S/Shri Ram Parkash, Shobha Ram, Lalit and Joginder etc. have been retained by the respondent department which is against the mandatory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against this back-drop a prayer has been made that the termination order dated 31-12-1998 be quashed and the respondent be ordered to re-engage the petitioner with full back-wages and interest @ 18% and all other consequential benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, limitation, abandonment etc. On merits, it has been asserted that the petitioner was initially engaged as daily waged beldar in the year 3/1997 under Kasumpti Sub Division HPPWD Dhalli and he has worked intermittently upto 9/1998. It is denied that the services of the petitioner were terminated due to insufficient work. It is asserted that the petitioner had left the job at his own without intimation and now after a gap of 19 years he has raised the issue, hence, there is no question of violation of provisions of section 25-F, 25-G and 25-H of the Act. That the petitioner had failed to complete 240 days in each calendar year. It is asserted that the department was having sufficient work to execute and sufficient funds at that time and the department had engaged workers on availability of vacant posts at that time as well as appointed workers on compassionate grounds keeping in view the vacancy with the department but the same was not applicable to the petitioner as he himself had left the job at his own. The respondent prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed on 21-5-2018.

1. Whether the termination of the services of the petitioner by the respondent during August, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP*.

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

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

4. Whether the petition is barred by limitation as alleged? . . .*OPR*.

5. Relief.

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

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

Issue No. 1 : No.

Issue No. 2 : Becomes redundant

Issue No. 3 : No.

Issue No. 4 : Yes.

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

REASONS FOR FINDINGS

Issues No. 1 & 4 :

8. Being interlinked and co-related both these issues are taken up together for discussion and decision.

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

10. On the other hand, learned ADA for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner have never been terminated by the respondent who had left the job at his own without any intimation to the respondent. He also contended that the petitioner had not completed 240 days in any calendar year and no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. The petitioner has failed to appear in the witness box. However, he examined one Shri Ghan Shyam, Junior Assistant of respondent as PW-1 who deposed that as per record that Shri Ram Prakash was engaged as beldar in March, 1997, Shobha Ram in Feb., 1997, Lalit in August, 1997 and Joginder was engaged in August, 1997 and all of them are still working with the department. In cross-examination, he admitted that the aforesaid four persons namely Shobha Ram, Ram Prakash, Lalit and Joginder are working continuously with the department. He further admitted that the petitioner left the job at his own in September, 1998. He also admitted that the petitioner had not completed 240 days in any calendar year.

12. On the other hand, the respondent has examined one Shri Surjeet Singh, Assistant Engineer as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B and mandays chart Ex. RW-1/C. In cross-examination, he denied that the petitioner was engaged in Jan., 1997. He further denied that the petitioner remained continuous in service without any break. He admitted that the department had never issued any letter/warning to the petitioner for resumption of his duties. He denied that the petitioner had not left the job at his own rather the department had terminated his services. He further denied that the services of the petitioner were terminated on the assurance that he would be re-instated. He also denied that the services of the petitioner were terminated on 31-12-1998. He denied that the petitioner had completed 240 days in each calendar year. He further denied that Ram Prakash, Shobha Ram, Joginder and Lalit were juniors to the petitioner and they are still in service.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent *w.e.f.* March/1997 till September/1998 which fact is evident from the Mandays chart of the petitioner Ex. RW-1/C. No doubt, the case of the petitioner is that he had worked with the respondent till December, 1998 but to this effect no evidence has been led by him which could go to show that he had worked with the respondent till December, 1998. From the perusal of Mandays chart Ex. RW-1/C it is also clear that the petitioner had worked for 174 days in the year 1997 and for 189 days in the year, 1998. It is also clear from the record that the petitioner has raised the present dispute after a lapse of 15 years. Now, the question which arises for consideration before this Court is as to whether the claim filed by the petitioner is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Therefore, the position of law in respect of a stale claim is required to be seen.

15. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* 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, must be invariably followed.”

16. **In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

“Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand.” Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

17. **In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91**, the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. “In *Ajaib Singh (supra)*, the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib Singh (supra)*, but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.”

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15" In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

“6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made.” (Emphasis supplied).

18. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon’ble High Court dismissed the writ petition. The Hon’ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

“10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures.”

19. In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon’ble Apex Court set aside the judgments of Hon’ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

“9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.....

20. In UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

“ 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in

which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

21. In (2015) 15 SCC 1 titled as **Prabhakar Vs. Joint Director Sericulture Department and Anr.**, it has been held by the Hon'ble Supreme Court that policy of industrial adjudication is to be kept in mind that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers, financial arrangement and to avoid dislocation of an industry. The relevant paras of the aforesaid judgment are reproduced as under:

"38. It is now a well-recognized principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of lached is in fact an application of maxim of equity "delay defeats equities".

39. This principle is applied in those cases where discretionary orders of the court are claimed, such as specific performance, permanent or temporary injunction, appointment of Receiver, etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of the Constitution of India. In such cases, courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to court within the period prescribed by the Limitation Act.

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44. To summarise, although here is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the

Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers, financial arrangement and to avoid dislocation of an industry.

45. On the application of the aforesaid principle to the facts of the present case, we are of the view that High Court correctly decided the issue holding that the reference at such a belated stage i.e. after fourteen years of termination without any justifiable explanation for delay, the appropriate Government had no jurisdiction or power to make reference of a non-existing dispute”.

22. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of H.P. and others decided on 26-10-2016**, it has been held as under:

“9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position”.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* September 1998 and he raised the present dispute after a period of more than 15 years. But the petitioner has failed to explain the delay of 15 years in raising the industrial dispute as no evidence in this respect has been placed on record by the petitioner. Rather, he had kept silent and had not taken any steps to raise the dispute qua his alleged termination for the period of about 15 years. Therefore, the claim is highly stale and belated and is liable to be dismissed on the ground of delay in raising the dispute.

24. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working as such the respondent had violated the principles of “last come first go”. However, no evidence has been led by the petitioner to this effect. PW-2 deposed that Ram Prakash was engaged as beldar in March, 1997, Shobha Ram in Feb., 1997, Lalit and Joginder in August, 1997 and in crossexamination he stated that the petitioner was engaged in March 1997. From the statement of PW-2 it is revealed that Lalit and Joginder were engaged after the petitioner. However, in crossexamination PW-2 admitted that the petitioner had left the job at his own whereas Lalit and Joginder had been working continuously with the department. Therefore, the petitioner cannot claim equal treatment with his junior persons *i.e.* Lalit and Joginder who had been working continuously with the department. Moreover, since the petitioner had raised the present dispute after a period of 15 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 15 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. The learned counsel for the petitioner next contended that since the petitioner had completed 240 days in preceding 12 months prior to his termination, therefore, the respondent had violated the provisions of section 25-F of the Act. However, as observed earlier, since the petitioner

has raised the present dispute after a period of 15 years as such no protection of section 25-F can be granted to the petitioner.

25. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the present dispute after a lapse of about 15 years as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2 :

26. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 3 :

27. In support of this issue, no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

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

Announced in the open Court today on this 4th day of September, 2018.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

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

Ref. No. 115 of 2018 alongwith
App. No. 28 of 2017
Instituted on 22-3-2017
Decided on 20-9-2018

Sarwan Singh s/o Shri Dhuni Chand r/o VPO Trilokpur, Tehsil Nahan, District Sirmour,
HP. .Petitioner.

VS

1. The Commissioner (D.C Sirmour) Temple Trust Trilokpur, District Sirmour, HP.

2. The Assistant Commissioner (SDM Nahan) Temple Trust, Trilokpur, District Sirmour, H.P. . . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidta, Advocate.

For respondents : Ms. Shalini Thakur, Advocate.

AWARD

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

“Whether the termination of services of Shri Sarwan Singh s/o Shri Duni Chand r/o VPO Trilokpur Tehsil Nahan District Sirmour, HP *w.e.f.* 15-9-2016 by (i) The Commissioner (DC) Temple Trust Trilokpur, District Sirmour, HP (ii) The Assistant Commissioner (SDM) Temple Trust Trilokpur, District Sirmour, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. In nutshell the case of the petitioner is that *w.e.f.* 1-2-2007, he was appointed as safai karamchhari on contract basis by the respondent No. 1 and worked as such till 15-9-2016 continuously and thereafter his services were dismissed vide office order dated 15-9-2016 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further averred that the work and conduct of the petitioner remained upto the mark to the concerned officials of the trust and he had completed 240 days in each calendar year and even number of efficiency letters and increments were given to him from time to time and his name was sent to the government for regularization and even the petitioner came to know from reliable sources that Special Secretary language and Culture Department had granted the approval for regularization of his services vide letter dated 1-8-2016 but neither the same was conveyed to the petitioner by the respondents nor his services were regularized. It is also averred that the notice dated 25-8-2015 was served upon the petitioner and he appeared before the SDM Nahan on 7-9-2015 and denied the entire allegation leveled against him in the notice dated 25-8-2015 and thereafter without serving any chargesheet, a committee was constituted by the respondent No. 1 to enquire into the allegation leveled against the petitioner and as such he (petitioner) appeared before the committee and his statement was recorded and even before conducting the enquiry the respondent No. 1 had not supplied any chargesheet to the petitioner and also did not explain any procedure to be adopted in the enquiry due to which the petitioner could not defend his case properly. That a show cause notice dated 22-7-2016, was served upon the petitioner which was duly replied by him and thereafter the respondent No. 2 terminated the services of the petitioner without any basis and without proving the allegation leveled against him. That the committee constituted by the commissioner has not conducted the enquiry fairly as proper opportunity to defend the case was not given to him and even the principles of natural justice were not followed by the committee. The joint enquiry proceeding was conducted by the committee without following any procedure and the petitioner was not given defence assistant. That the termination order passed by the Assistant Commissioner Nahan, is not valid in the eyes of law as the Assistant Commissioner is not competent to terminate the services of the petitioner. That junior person to the petitioner is still working with the respondents and even new persons have also been engaged. That the petitioner visited the office of respondent No. 2 for his reengagement but of no avail and his termination is against the principles of natural justice. That the petitioner is unemployed *w.e.f.* 15-9-2016 and is nowhere gainfully employed. It is stated that the petitioner was forced to file the

demand notice before the Labour-cum-conciliation officer, Nahan in the month of November, 2016 and period of 45 days as provided under the Act to send the case of the workman stands already expired and the appropriate government had failed to send the reference of petitioner to this Court for adjudication. Against his back-drop a prayer has been made that the dismissal order of the services of the petitioner *w.e.f.* 15-9-2016 be declared null and void and the petitioner be reengaged in service with all consequential service benefits such as continuity, full back-wages and other service benefits and the petitioner be regularized as per the approval dated 1-8-2016.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, that the petitioner has no cause of action to file the present application etc. On merits, it has been asserted that the petitioner was appointed as safai karmachari on daily wage basis by the respondents and remained as such till 15-9-2016. It is further asserted that being engaged as a safai karmachari it was not expected from the petitioner to commit a breach in discharge of his duties and the enquiry report of Temple Officer-cum-Tehsildar Nahan proved the fact that the petitioner was abusing his position as employee of temple trust to the hilt and the completion of 240 days or even years together does not give licence to the petitioner to breach the trust reposed in him by the employer and even past recommendations in favour of the petitioner were without knowledge of the ways and means adopted by him in breaking the trust and misappropriating the offerings of the deity, hence, the past recommendations cannot be used as a ground to challenge the termination order based on the enquiry report. It is also asserted that the petitioner committed serious misconduct while performing his official duties and in order to enquire into the serious allegations against him an internal enquiry was conducted which was free, fair and impartial and the petitioner was given proper and reasonable opportunity to defend himself and even the bald statement of the petitioner that the allegations leveled against him were false could not be trusted in the fact of CCTV camera footage over a period of time. That the petitioner has not disclosed that a CD with time schedule of tempering with CCTV camera's and cash boxes were also given to him along-with notice dated 25-8-2015 with further direction to appear before the authority on 7-9-2015. That the services of the petitioner were terminated due to the misconduct as is obvious from the conclusion of the enquiry report and the incidents of tempering with cash boxes and CCTV camera's were seen many times on a specific day *i.e.* 11-7-2015 and reported as sort of embezzlement of cash too, hence, the question of giving compensation does not arise at all. The respondents prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed on 17-10-2017.

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 15-9-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .OPP.
2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .OPP.
3. Whether the petition is not maintainable as alleged? . .OPR.
4. Relief.

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

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

Issue No. 1 : Yes.

Issue No. 2 : Entitled to reinstatement with seniority and continuity but without back-wages.

Issue No. 3 : No.

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

REASONS FOR FINDINGS

Issues No. 1 :

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without complying with the provisions of the Act especially when he had completed 240 days in each calendar year and in twelve calendar months preceding his termination. He further contended that the enquiry conducted against him was totally eyewash just to oust him from service as no opportunity of being heard was afforded to the petitioner and even before starting the enquiry proceedings, the procedure of enquiry was not explained to the petitioner. He also contended that the petitioner was not given opportunity to defend his case through defence assistant which is against the mandatory provisions of the Act.

9. On the other hand, learned counsel for the respondents contended that the services of the petitioner were terminated due to the misconduct as is obvious from the conclusion of the enquiry report. She further contended that the petitioner was rightly terminated from service after conducting a fair and proper enquiry and during the enquiry proceedings, he was afforded full opportunity of being heard in accordance with the principles of natural justice.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of seniority list Ex. PW-1/B, dismissal order dated 15-9-2016 Ex. PW-1/C, copy of notice dated 25-8-2015 Ex. PW-1/D, copy of show cause notice Ex. PW-1/E, reply to show cause notice dated 22-7-2016 Ex. PW-1/F, letter dated 28-9-2016 Ex. PW-1/G and copy of demand notice Ex. PW-1/H, copy of letter sent by the conciliation officer Ex. PW-1/J, letter dated 17-7-2017 Ex. PW-1/K and office order dated 22-6-2017 Ex. PW-1/L. In cross-examination, he denied that when he was called on 7-9-2015 by the enquiry officer a CD was shown to him in which he was found tempering with cash box and CCTV Camera. He further denied that his services were terminated on account of serious misconduct of tempering with the cash box and CCTV Camera footage over a period of time while performing official duties.

11. Shri Bharat Singh, Clerk of respondents trust appeared in to the witness box as PW-2 to depose that he knows the petitioner who was working as safai karmachari (sewadar) with the respondents and he used to work sincerely and performed every work honestly. He further stated that the allegations regarding tempering with cash box and CCTV camera leveled against the petitioner are totally false and he never heard anything contrary against the petitioner. In cross-examination, he admitted that he was not supervising the work of the petitioner. PW-3 Shri Lal Singh, Security Guard of respondents trust and PW-4 Ms. Anita Singh, Clerk of respondents corroborated the statement of PW-2.

12. On the other hand, the respondents have examined two RWs. Shri Harish Sharma, Assistant Manager Accounts of respondents trust appeared into the witness box as RW-1 and stated that he had prepared the CCTV footage of the entire enquiry proceedings. In cross-examination, he admitted that he had not written the enquiry proceedings nor he participated in the enquiry. He denied that the CD of CCTV footage was never supplied to the petitioner. He admitted that he never supplied the CD to the petitioner personally.

13. RW-2 Shri R.D Hernote, District Revenue Officer deposed that he had prepared a detailed enquiry report Ex. RW-2/A in the capacity of Temple Officer. He further stated that he had not summoned the petitioner at the time of preparing the enquiry report as the statement of the petitioner was already recorded by the three members committee under the chairmanship of SDM Nahan in his presence. In cross-examination, he admitted that he was not appointed as an enquiry officer to conduct the enquiry against the petitioner. He further admitted that he had prepared the enquiry report Ex. RW-2/A on the basis of the record supplied to him by the Temple Trust. He also admitted that the committee was constituted to enquire into the allegations against eight workers of the Temple Trust including the petitioner and a joint enquiry was conducted against all of them by the committee. He stated that the petitioner was not given an opportunity by the committee to be represented by defence assistant and the committee has not given any opportunity to the petitioner to cross-examine the witnesses of the Temple Trust. He denied that CD of CCTV footage was not supplied to the petitioner by the committee. He further denied that the enquiry was not conducted against the petitioner in a fair and proper manner without following the principles of natural justice. He also denied that false allegations have been leveled against the petitioner. He admitted that no witness has deposed against the petitioner in the enquiry proceedings. He denied that enquiry report has been wrongly prepared by him. He admitted that the enquiry report Ex. RW-2/A has not been signed by the Chairman and any other member of the committee except himself.

14. RW-1 Shri Harish Kumar Sharma was recalled on 20-8-2018 and he deposed that CD Ex. RW-1/A has been extracted from CCTV Footage by him. In crossexamination, he admitted that there are no written orders for preparing the CD. He further admitted that he had not associated the petitioner and other workers while preparing the CD. He also admitted that the copies of the aforesaid CD can be prepared later on. He admitted that he had not prepared the CD Ex. RW-1/A directly from the CCTV Footage. He further admitted that the CD Ex. RW-1/A was never produced before the enquiry officer and the same was never played before the enquiry officer. He also admitted that the CCTV footage can be edited at any time by anyone. He expressed his ignorance to say that as to whether the CCTV Footage of July/August 2015 was tempered with or not. He denied that CD Ex. RW-1/A has been edited by him later on. He admitted that he was not authorized to prepare the CD Ex. RW-1/A. He further admitted that the copy of CD Ex. RW-1/A has not been supplied to the petitioner.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as a safai karamchari on daily wage basis by the respondents trust on 1-2-2007 and he remained in service upto 15-9-2016. It is also revealed from the perusal of record that a notice dated 25-8-2015 Ex. PW-1/D was issued to the petitioner with respect to the fact that a complaint was received on the ground that the petitioner was involved in theft and other activities. In order to enquire into the allegations against the petitioner, an enquiry was conducted by the respondents without serving the chargesheet to the petitioner. Thereafter, another show cause notice dated 22-7-2016 Ex. PW-1/E was issued to the petitioner to which he filed reply Ex. PW-1/F and since his reply was not found satisfactory, therefore, the services of the petitioner were dismissed *w.e.f.* 15-9-2016 on the basis of enquiry report dated 9-5-2016 Ex. RW-2/A vide letter dated 15-9-2016 Ex. PW-1/C.

16. The learned counsel for the petitioner contended that there was a violation of the principles of natural justice in the enquiry conducted against the petitioner as the procedural requirements were not complied with. The petitioner was not given an opportunity to be represented through a defence assistant in the enquiry proceedings. Separate enquiry was not conducted against the petitioner and before starting the joint enquiry, the consent of the petitioner was not obtained due to which the petitioner could not get the proper opportunity to defend his case. The learned counsel for the petitioner further contended that no proper opportunity of being heard was given to the petitioner in the enquiry proceedings. On the other hand the learned counsel for the respondents contended that the petitioner had been given proper and reasonable opportunity to defend his case and the petitioner had participated in the enquiry. She further contended that there is a sufficient compliance of principles of natural justice as a notice dated 25-8-2015 was issued to the petitioner and thereafter a show cause notice dated 22-7-2016 was also served upon him. Now the question which arises for consideration is as to whether the domestic enquiry conducted by the respondents against the petitioner is unfair and violative of principles of natural justice. It is a settled proposition of law that the technicalities of the Evidence Act are not applicable in the domestic enquiry but at the same time it is also true that the domestic enquiry is not an empty formality and the principles of natural justice have to be followed. In **State of Haryana Vs. Rattan Singh (1977) 2 SCC 491**, it has been held by the Hon'ble Apex Court as under:

“In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence-not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding”.

17. Therefore, the contentions of the learned counsel for the parties have to be examined in the light of the judgment of the Hon'ble Supreme Court (*supra*). I have carefully perused the enquiry report Ex. RW-2/A alongwith CCTV Footage annexed with the same and on the perusal of the same, in the light of facts and circumstances of the instant case and the rival submissions of the learned counsel for the parties, it can safely be held that the enquiry conducted against the petitioner was unfair and violative of the principles of natural justice.

18. The first contention of the learned counsel for the petitioner is to the effect that while conducting the enquiry, the enquiry officer did not allow the petitioner to be represented through a defence assistant in the proceedings and the same amounted to the violation of the principles of natural justice. However, this contention of the learned counsel for the petitioner is devoid of any force. The basic principle of the domestic enquiry is that the employees have no right to be represented in the domestic enquiry by any other person or a lawyer unless the rules specifically provide for the same. The learned counsel for the petitioner has failed to place on record any rules of the Temple Trust regarding representation of a chargesheeted workman either through a counsel or through any defence assistant/co-worker. Even otherwise non-permitting the petitioner to be represented by any defence assistant do not violate the principles of natural justice. It has been held

by the Hon'ble Apex Court in (2008)-1 SCC (L&S) titled as D.G Railway Protection Force and ors Vs. K.Raghuram Babu as under:

“11. Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through some one, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.”

19. Therefore, in view of the aforesaid judgment and also in view of the facts and circumstances of the present case, the non-representation of the petitioner by the defence assistant does not violate the principles of natural justice as contended by the learned counsel for the petitioner.

20. Now, coming to the other aspects of the domestic enquiry. It is a settled proposition of law that the procedural fairness is the essence of natural justice and procedural violation cannot lightly be brushed aside. From the perusal of the entire evidence on record, it is clear that a committee was constituted by the Deputy Commissioner, Sirmour-cum-Commissioner Temple Trust to enquire into the allegations leveled against the petitioner and seven other workers and the committee comprised of SDM Nahan-cum-Assistant Commissioner, Temple Trust as its Chairman and two members *i.e* Tehsildar-cum-Temple Officer and Assistant Engineer-cum-Temple Officer. Shri R. D Harnot the then Tehsildar-cum-Temple Officer, appeared into the witness box as RW-2 and deposed that he had prepared a detailed enquiry report Ex. RW-2/A in the capacity of Temple Officer. However in cross-examination he admitted that the committee had not given any opportunity to the petitioner to cross-examine the witnesses of the Temple Trust and he had prepared the enquiry report only on the basis of CCTV footage. He also admitted that they had not called any expert to test the authenticity of CCTV footage. He expressed his ignorance as to whether the CD of CCTV footage was authentic. The aforesaid admissions of RW-2 in his cross-examination are very material and the same clearly establish the fact that reasonable opportunity of being heard was not afforded to the petitioner. The petitioner was not granted the opportunity to cross-examine the witnesses of the Temple Trust which is clear cut violation of the principles of natural justice. There is also no material on record to suggest that whether the procedure of the enquiry was explained to the petitioner and other workers before commencement of the enquiry proceedings. The perusal of the enquiry report Ex. RW-2/A further shows that a joint enquiry was conducted against eight workers including the petitioner, Geeta Ram Pujari and Balwan Singh Security Guard. No material has been placed on record by the respondents to show that whether any consent was obtained from the petitioner for conducting a joint enquiry against him alongwith other workers. RW-2 admitted that a joint enquiry was conducted against eight workers and there is no consent of the petitioner on the record file produced in the Court. Therefore, in the absence of any consent obtained from the petitioner for conducting the joint enquiry, great prejudice has been caused to the petitioner as he had not been granted reasonable opportunity to defend himself. It is also clear from the perusal of the enquiry report Ex. RW-2/A that the same is solely based upon the CCTV footage annexed with the enquiry report and no witness has deposed against the petitioner in the enquiry proceedings. RW-2 admitted that he has prepared the enquiry report only on the basis of the CCTV Footage and he also expressed his ignorance as to whether the CD of CCTV footage was authentic or not. He further admitted that no witness has deposed against the petitioner in the enquiry proceedings. Moreover, it was incumbent upon the respondents to produce the enquiry proceedings before this Court in order to ascertain as to whether reasonable opportunity was given to the petitioner to defend himself or not. However, for the reasons best known to the respondents, the enquiry proceedings have been withheld from this Court. From the mere fact that the petitioner had participated in the enquiry and notices dated 25-8-2015 and 22-7-2016 were issued to him by

the respondents will not establish that the petitioner had been given reasonable opportunity to defend himself as contended by the learned counsel for the respondents.

21. Therefore, in view of the facts and circumstances of the present case, it has been established on record that the petitioner was not given reasonable opportunity to defend himself in the enquiry proceedings and the principles of natural justice have not been followed. Hence, I have no hesitation in holding that the enquiry conducted against the petitioner is violative of the principles of natural justice.

22. The learned counsel for the respondents further contended that as per Temple Rules, the daily wager can be terminated at any point of time and there is no need of enquiry. However, this contention of the learned counsel for the respondents cannot be accepted as no Temple Rules have been placed on record by the respondents and even if the rules provide for the termination of the daily wagers without departmental enquiry, the same are against the principles of natural justice. In a judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** it has been held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9.

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11.

12.

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice. Since, in the instant case also there is no dispute about the fact that the petitioner had completed 240 working days in the calendar year and in preceding twelve months prior to his termination, hence, the contention of the learned counsel for the respondents that as per the Temple rules the daily wager can be terminated at any point of time without any enquiry cannot be accepted.

23. There can be no doubt about the fact that the respondents were entitled to lead evidence on merits before this Court to prove the alleged misconduct of the petitioner in case the enquiry was found to be in violation of the principles of natural justice. Now, the next question which arises for consideration before this Court as to whether the alleged misconduct against the petitioner has been proved before this Court. The perusal of the dismissal letter Ex. PW-1/C shows that the services of the petitioner were terminated on the basis of the enquiry report dated 9-5-2016 Ex. RW-2/A on the ground that the petitioner was found involved alongwith two other workers in tempering with the cash boxes of the Temple Trust and CCTV cameras and also in misappropriating the cash of the Temple Trust. But to prove the aforesaid misconduct, no evidence has been led by the respondents before this Court except the CD Ex. RW-1/A which has been allegedly

extracted from CCTV Footage by RW-1. However, no credence can be attached to the CD Ex. RW-1/A in view of the cross-examination of RW-1 wherein he admitted that he was not authorized to prepare the CD Ex. RW-1/A and no written orders had been passed by the SDM Nahan directing him to prepare the CD. He further admitted that he had prepared the CD Ex. RW-1/A in the month of May 2018 and he had not prepared the same directly from the CCTV footage. He had also not produced the original CD and he admitted that the CCTV Footage can be edited at any point of time by anyone. He expressed his ignorance to the suggestion of the learned counsel for the petitioner as to whether CCTV Footage for the month of July/August 2015 was tempered with or not. He further admitted that the petitioner was not called while preparing the CCTV Footage. Therefore, in view of the admission of the RW-1 that the petitioner was not associated in preparing the CD from CCTV Footage and also that the CCTV Footage can be edited at any point of time by anyone and that the CD Ex. RW-1/A was not prepared directly from the CCTV Footage, no credence can be attached to the CD Ex. RW-1/A. No other evidence has been led by the respondents in order to prove the alleged misconduct against the petitioner. On the other hand the petitioner has examined three PWs *i.e.* PW-2 to PW-4 who are the employees of the Temple Trust and they categorically deposed that the petitioner used to work sincerely and performed every work honestly and the entire allegations regarding tempering with cash box and CCTV Camera leveled against the petitioner are totally false. PW-2 to PW-4 were cross-examined by the learned counsel for the respondents, however, nothing favourable could be elicited from their cross-examination. No employee/workman has been examined before this Court by the respondents to prove that the petitioner was found tempering with the cash box and CCTV Cameras. There is no eye witness examined by the respondents that the petitioner was found misappropriating with the cash of the temple trust. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was found tempering with the CCTV Cameras and cash boxes as such the respondents have failed to prove the alleged misconduct of the petitioner before this Court.

24. Therefore, in view of the fact that the enquiry conducted against the petitioner was in violation of the principles of natural justice and also in view of the fact that the respondents have failed to prove the alleged misconduct against the petitioner before this Court, it can safely be held that the dismissal of the petitioner *w.e.f.* 15-9-2016 was illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the petitioner and against the respondents.

Issue No. 2 :

25. Since, I have held under issue No. 1 above that the termination of the services of the petitioner by the respondents *w.e.f.* 15-9-2016 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity. The learned counsel for the respondents contended that the respondents have lost the confidence in the petitioner and once the employer lost the confidence in the employee and the bonafide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenges and in case of loss of confidence reinstatement cannot be directed. She also placed reliance upon the decisions of the Hon'ble Supreme Court reported in AIR 2007 SC 152 titled as Depot Manager APSRTC *Vs.* Raghuda Siva Sankar Prasad, (2008) 4 SCC 517 titled as workmen of Balmadies Estates *Vs.* Management Balmadies Estate and Ors., AIR 2005 SC 2769 titled as Bharat Heavy Electricals Ltd. *Vs.* M. Chandrashekhara Reddy and Ors. However, this contention of the learned counsel for the respondents cannot be accepted as the respondents have failed to prove on record the alleged misconduct of the petitioner as such the question of loss of confidence does not arise. The case law cited by the learned counsel for the respondents are not applicable in the facts and circumstances of the present case.

26. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In

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

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

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

28. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. Therefore, in view of the entire evidence on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any backwages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondents.

Issue No. 3 :

29. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the reference has been sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 20th Day of September, 2018.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

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

Ref. No. 88 of 2018 alongwith

App. No. 29 of 2017

Instituted on 22-3-2017

Decided on 20-9-2018

Balwan Singh s/o Shri Mehma Nand r/o Village Matter, Tehsil Nahan, District Sirmour, HP. *.Petitioner.*

VS.

1. The Commissioner (D. C. Sirmour) Temple Trust Trilokpur, District Sirmour, HP.
2. The Assistant Commissioner (SDM Nahan) Temple Trust, Trilokpur, District Sirmour, HP. *.Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

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

For respondents : Ms. Shalini Thakur, Advocate.

AWARD/ORDER

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

“Whether the termination of services of Shri Balwan Singh S/o Shri Mehma Nand R/o VPO Matter Tehsil Nahan District Sirmour, HP w.e.f. 15-9-2016 by (i) The Commissioner (DC) Temple Trust Trilokpur, District Sirmour, HP (ii) The Assistant Commissioner (SDM) Temple Trust Trilokpur, District Sirmour, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. In nutshell the case of the petitioner is that *w.e.f.* 29-3-2006, he was appointed as security guard on contract basis by the respondent No. 1 and worked as such till 15-9-2016 continuously and thereafter his services were dismissed vide office order dated 15-9-2016 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further averred that the work and conduct of the petitioner remained upto the mark to the concerned officials of the trust and he had completed 240 days in each calendar year and even number of efficiency letters and increments were given to him from time to time and his name was sent to the government for regularization and even the petitioner came to know from reliable sources that Special Secretary language and Culture Department had granted the approval for regularization of his services *vide* letter dated 1-8-2016 but neither the same was conveyed to the petitioner by the respondents nor his services were regularized. It is also averred that the notice dated 25-8-2015 was served upon the petitioner and he appeared before the SDM Nahan on 7-9-2015 and denied the entire allegation leveled against him in the notice dated 25-8-2015 and

thereafter without serving any chargesheet, a committee was constituted by the respondent No. 1 to enquire into the allegation leveled against the petitioner and as such he (petitioner) appeared before the committee and his statement was recorded and even before conducting the enquiry the respondent No. 1 had not supplied any chargesheet to the petitioner and also did not explain any procedure to be adopted in the enquiry due to which the petitioner could not defend his case properly. That a show cause notice dated 22-7-2016, was served upon the petitioner which was duly replied by him and thereafter the respondent No. 2 terminated the services of the petitioner without any basis and without proving the allegation leveled against him. That the committee constituted by the commissioner has not conducted the enquiry fairly as proper opportunity to defend the case was not given to him and even the principles of natural justice were not followed by the committee. The joint enquiry proceeding was conducted by the committee without following any procedure and the petitioner was not given defence assistant. That the termination order passed by the Assistant Commissioner Nahan, is not valid in the eyes of law as the Assistant Commissioner is not competent to terminate the services of the petitioner. That junior person to the petitioner is still working with the respondents and even new persons have also been engaged. That the petitioner visited the office of respondent No. 2 for his reengagement but of no avail and his termination is against the principles of natural justice. That the petitioner is unemployed *w.e.f.* 15-9-2016 and is nowhere gainfully employed. It is stated that the petitioner was forced to file the demand notice before the Labour-*cum*-conciliation officer, Nahan in the month of November, 2016 and period of 45 days as provided under the Act to send the case of the workman stands already expired and the appropriate government had failed to send the reference of petitioner to this Court for adjudication. Against his back-drop a prayer has been made that the dismissal order of the services of the petitioner *w.e.f.* 15-9-2016 be declared null and void and the petitioner be reengaged in service with all consequential service benefits such as continuity, full back-wages and other service benefits and the petitioner be regularized as per the approval dated 1-8-2016.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the petitioner has no cause of action to file the present application etc. On merits, it has been asserted that the petitioner was appointed as security guard on contract basis by the respondents and remained as such till 15-9-2016. It is further asserted that being engaged as a security guard it was not expected from the petitioner to commit a breach in discharge of his duties and the enquiry report of Temple Officer-*cum*-Tehsildar Nahan proved the fact that the petitioner was abusing his position as employee of temple trust to the hilt and the completion of 240 days or even years together does not give licence to the petitioner to breach the trust reposed in him by the employer and even past recommendations in favour of the petitioner were without knowledge of the ways and means adopted by him in breaking the trust and misappropriating the offerings of the deity, hence, the past recommendations cannot be used as a ground to challenge the termination order based on the enquiry report. It is also asserted that the petitioner committed serious misconduct while performing his official duties and in order to enquire into the serious allegations against him an internal enquiry was conducted which was free, fair and impartial and the petitioner was given proper and reasonable opportunity to defend himself and even the bald statement of the petitioner that the allegations leveled against him were false could not be trusted in the fact of CCTV camera footage over a period of time. That the petitioner has not disclosed that a CD with time schedule of tempering with CCTV camera's and cash boxes were also given to him alongwith notice dated 25-8-2015 with further direction to appear before the authority on 7-9-2015. That the services of the petitioner were terminated due to the misconduct as is obvious from the conclusion of the enquiry report and the incidents of tempering with cash boxes and CCTV camera's were seen many times on a specific day *i.e.* 11-7-2015 and reported as sort of embezzlement of cash too, hence, the question of giving compensation does not arise at all. The respondents prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed on 17-10-2017.

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 15-9-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
3. Whether the petition is not maintainable as alleged? . . .*OPR.*
4. Relief :

6. I have heard the learned counsel for the parties and have also gone through the record of the case as well as the written arguments filed on behalf of the respondents.

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

Issue No. 1 : Yes.

Issue No. 2 : Entitled to reinstatement with seniority and continuity but without backwages.

Issue No. 3 : No.

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

REASONS FOR FINDINGS

Issues No.1 :

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without complying with the provisions of the Act especially when he had completed 240 days in each calendar year and in twelve calendar months preceding his termination. He further contended that the enquiry conducted against him was totally eyewash just to oust him from service as no opportunity of being heard was afforded to the petitioner and even before starting the enquiry proceedings, the procedure of enquiry was not explained to the petitioner. He also contended that the petitioner was not given opportunity to defend his case through defence assistant which is against the mandatory provisions of the Act.

9. On the other hand, learned counsel for the respondents contended that the services of the petitioner were terminated due to the misconduct as is obvious from the conclusion of the enquiry report. She further contended that the petitioner was rightly terminated from service after conducting a fair and proper enquiry and during the enquiry proceedings, he was afforded full opportunity of being heard in accordance with the principles of natural justice.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of seniority list Ex. PW-1/B, dismissal order Ex. PW-1/C, copy of notice dated 25-8-2015 Ex. PW-1/D, copy of show cause notice Ex. PW-1/E,

reply to show cause notice Ex. PW-1/F, letter dated 23-9-2016 Ex. PW-1/G and copy of demand notice Ex. PW-1/H, copy of letter sent by the conciliation officer Ex. PW-1/J, letter dated 17-7-2017 Ex. PW-1/K and office order dated 22-6-2017 Ex. PW-1/L. In crossexamination, he admitted that during the enquiry proceedings, the enquiry officer had shown him the CD and CCTV footage on computer. He denied that he was found tempering with cash box and CCTV Camera.

11. Shri Bharat Singh, Clerk of respondents trust appeared in to the witness box as PW-2 to depose that he knows the petitioner who was working as security guard with the respondents and he used to work sincerely and performed every work honestly. He further stated that the entire allegations regarding tempering with cash box and CCTV camera leveled against the petitioner are totally false and he never heard anything contrary against the petitioner. In cross-examination, he admitted that he was not supervising the work of the petitioner. PW-3 Shri Lal Singh, Security Guard of respondents trust and PW-4 Ms. Anita Singh, Clerk of respondents corroborated the statement of PW-2.

12. On the other hand, the respondents have examined two RWs. Shri Harish Sharma, Assistant Manager Accounts of respondents trust appeared into the witness box and stated that he had prepared the CCTV footage of the entire enquiry proceedings. In crossexamination, he admitted that he had not written the enquiry proceedings nor he participated in the enquiry. He denied that the CD of CCTV footage was never supplied to the petitioner. He admitted that he never supplied the CD to the petitioner personally.

13. RW-2 Shri R.D Harnot, District Revenue Officer deposed that he had prepared a detailed enquiry report Ex. RW-2/A in the capacity of Temple Officer. He further stated that he had not summoned the petitioner at the time of preparing the enquiry report as the statement of the petitioner was already recorded by the three members committee under the chairmanship of SDM Nahan in his presence. In cross-examination, he admitted that he was not appointed as an enquiry officer to conduct the enquiry against the petitioner. He further admitted that he had prepared the enquiry report Ex. RW-2/A on the basis of the record supplied to him by the Temple Trust. He also admitted that the committee was constituted to enquire into the allegations against eight workers of the Temple Trust including the petitioner and a joint enquiry was conducted against all of them by the committee. He stated that the petitioner was not given an opportunity by the committee to be represented by defence assistant and the committee has not given any opportunity to the petitioner to cross-examine the witnesses of the Temple Trust. He denied that CD of CCTV footage was not supplied to the petitioner by the committee. He further denied that the enquiry was not conducted against the petitioner in a fair and proper manner without following the principles of natural justice. He also denied that false allegations have been leveled against the petitioner. He admitted that no witness has deposed against the petitioner in the enquiry proceedings. He denied that enquiry report has been wrongly prepared by him. He admitted that the enquiry report Ex. RW-2/A has not been signed by the Chairman and any other member of the committee except himself.

14. RW-1 Shri Harish Kumar Sharma was recalled on 20-8-2018 and he deposed that CD Ex. RW-1/A has been extracted from CCTV Footage by him. In crossexamination, he admitted that there are no written orders for preparing the CD. He further admitted that he had not associated the petitioner and other workers while preparing the CD. He also admitted that the copies of the aforesaid CD can be prepared later on. He admitted that he had not prepared the CD Ex. RW-1/A directly from the CCTV Footage. He further admitted that the CD Ex. RW-1/A was never produced before the enquiry officer and the same was never played before the enquiry officer. He also admitted that the CCTV footage can be edited at any time by anyone. He expressed his ignorance to say that as to whether the CCTV Footage of July/August 2015 was tempered with or not. He denied

that CD Ex. RW-1/A has been edited by him later on. He admitted that he was not authorized to prepare the CD Ex. RW-1/A. He further admitted that the copy of CD Ex. RW-1/A has not been supplied to the petitioner.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as a security guard on contract basis by the respondents trust on 29-3-2006 and he remained in service upto 15-9-2016. It is also revealed from the perusal of record that a notice dated 25-8-2015 Ex. PW-1/D was issued to the petitioner with respect to the fact that a complaint was received on the ground that the petitioner was involved in theft and other activities. In order to enquire into the allegations against the petitioner, an enquiry was conducted by the respondents without serving the chargesheet to the petitioner. Thereafter, another show cause notice dated 22-7-2016 Ex. PW-1/E was issued to the petitioner to which he filed reply Ex. PW-1/F and since his reply was not found satisfactory, therefore, the services of the petitioner were dismissed *w.e.f.* 15-9-2016 on the basis of enquiry report dated 9-5-2016 Ex. RW-2/A vide letter dated 15-9-2016 Ex. PW-1/C.

16. The learned counsel for the petitioner contended that there was a violation of the principles of natural justice in the enquiry conducted against the petitioner as the procedural requirements were not complied with. The petitioner was not given an opportunity to be represented through a defence assistant in the enquiry proceedings. Separate enquiry was not conducted against the petitioner and before starting the joint enquiry, the consent of the petitioner was not obtained due to which the petitioner could not get the proper opportunity to defend his case. The learned counsel for the petitioner further contended that no proper opportunity of being heard was given to the petitioner in the enquiry proceedings. On the other hand the learned counsel for the respondents contended that the petitioner had been given proper and reasonable opportunity to defend his case and the petitioner had participated in the enquiry. She further contended that there is a sufficient compliance of principles of natural justice as a notice dated 25-8-2015 was issued to the petitioner and thereafter a show cause notice dated 22-7-2016 was also served upon him. Now the question which arises for consideration is as to whether the domestic enquiry conducted by the respondents against the petitioner is unfair and violative of principles of natural justice. It is a settled proposition of law that the technicalities of the Evidence Act are not applicable in the domestic enquiry but at the same time it is also true that the domestic enquiry is not an empty formality and the principles of natural justice have to be followed. In **State of Haryana Vs. Rattan Singh (1977) 2 SCC 491**, it has been held by the Hon'ble Apex Court as under:

“In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence-not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding”.

17. Therefore, the contentions of the learned counsel for the parties have to be examined in the light of the judgment of the Hon'ble Supreme Court (*supra*). I have carefully perused the enquiry report Ex. RW-2/A along-with CCTV Footage annexed with the same and on the perusal of the same, in the light of facts and circumstances of the instant case and the rival submissions of the learned counsel for the parties, it can safely be held that the enquiry conducted against the petitioner was unfair and violative of the principles of natural justice.

18. The first contention of the learned counsel for the petitioner is to the effect that while conducting the enquiry, the enquiry officer did not allow the petitioner to be represented through a defence assistant in the proceedings and the same amounted to the violation of the principles of natural justice. However, this contention of the learned counsel for the petitioner is devoid of any force. The basic principle of the domestic enquiry is that the employees have no right to be represented in the domestic enquiry by any other person or a lawyer unless the rules specifically provide for the same. The learned counsel for the petitioner has failed to place on record any rules of the Temple Trust regarding representation of a chargesheeted workman either through a counsel or through any defence assistant/co-worker. Even otherwise non-permitting the petitioner to be represented by any defence assistant do not violate the principles of natural justice. It has been held by the **Hon'ble Apex Court in (2008)-1 SCC (L&S) titled as D.G Railway Protection Force and ors Vs. K. Raghuram Babu** as under:

“11. Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through some one, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.”

19. Therefore, in view of the aforesaid judgment and also in view of the facts and circumstances of the present case, the non-representation of the petitioner by the defence assistant does not violate the principles of natural justice as contended by the learned counsel for the petitioner.

20. Now, coming to the other aspects of the domestic enquiry. It is a settled proposition of law that the procedural fairness is the essence of natural justice and procedural violation cannot lightly be brushed aside. From the perusal of the entire evidence on record, it is clear that a committee was constituted by the Deputy Commissioner, Sirmour-cum-Commissioner Temple Trust to enquire into the allegations leveled against the petitioner and seven other workers and the committee comprised of SDM Nahan-cum-Assistant Commissioner, Temple Trust as its Chairman and two members *i.e.* Tehsildar-cum-Temple Officer and Assistant Engineer-cum-Temple Officer. Shri R. D. Harnot the then Tehsildar-cum-Temple Officer, appeared into the witness box as RW-2 and deposed that he had prepared a detailed enquiry report Ex. RW-2/A in the capacity of Temple Officer. However in cross-examination he admitted that the committee had not given any opportunity to the petitioner to cross-examine the witnesses of the Temple Trust and he had prepared the enquiry report only on the basis of CCTV footage. He also admitted that they had not called any expert to test the authenticity of CCTV footage. He expressed his ignorance as to whether the CD of CCTV footage was authentic. The aforesaid admissions of RW-2 in his cross-examination are very material and the same clearly establish the fact that reasonable opportunity of being heard was not afforded to the petitioner. The petitioner was not granted the opportunity to cross-examine the witnesses of the Temple Trust which is clear cut violation of the principles of natural justice. There is also no material on record to suggest that whether the procedure of the enquiry was explained to the petitioner and other workers before commencement of the enquiry proceedings. The perusal of the enquiry report Ex. RW-2/A further shows that a joint enquiry was

conducted against eight workers including the petitioner, Geeta Ram Pujari and Sarwan Singh Safai Karamchari. No material has been placed on record by the respondents to show that whether any consent was obtained from the petitioner for conducting a joint enquiry against him along-with other workers. RW-2 admitted that a joint enquiry was conducted against eight workers and there is no consent of the petitioner on the record file produced in the Court. Therefore, in the absence of any consent obtained from the petitioner for conducting the joint enquiry, great prejudice has been caused to the petitioner as he had not been granted reasonable opportunity to defend himself. It is also clear from the perusal of the enquiry report Ex. RW-2/A that the same is solely based upon the CCTV footage annexed with the enquiry report and no witness has deposed against the petitioner in the enquiry proceedings. RW-2 admitted that he has prepared the enquiry report only on the basis of the CCTV Footage and he also expressed his ignorance as to whether the CD of CCTV footage was authentic or not. He further admitted that no witness has deposed against the petitioner in the enquiry proceedings. Moreover, it was incumbent upon the respondents to produce the enquiry proceedings before this Court in order to ascertain as to whether reasonable opportunity was given to the petitioner to defend himself or not. However, for the reasons best known to the respondents, the enquiry proceedings have been withheld from this Court. From the mere fact that the petitioner had participated in the enquiry and notices dated 25-8-2015 and 22-7-2016 were issued to him by the respondents will not establish that the petitioner had been given reasonable opportunity to defend himself as contended by the learned counsel for the respondents.

21. Therefore, in view of the facts and circumstances of the present case, it has been established on record that the petitioner was not given reasonable opportunity to defend himself in the enquiry proceedings and the principles of natural justice have not been followed. Hence, I have no hesitation in holding that the enquiry conducted against the petitioner is violative of the principles of natural justice.

22. The learned counsel for the respondents further contended that as per Temple Rules, the daily wager/contractual worker can be terminated at any point of time and there is no need of enquiry. However, this contention of the learned counsel for the respondents cannot be accepted as no Temple Rules have been placed on record by the respondents and even if the rules provide for the termination of the daily wagers/contractual worker without departmental enquiry, the same are against the principles of natural justice. In a judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** it has been held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9.

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11.

12.

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry

was required, not to speak of only issuance of the notice. Since, in the instant case also there is no dispute about the fact that the petitioner had completed 240 working days in the calendar year and in preceding twelve months prior to his termination, hence, the contention of the learned counsel for the respondents that as per the Temple rules the daily wage/contractual employee can be terminated at any point of time without any enquiry cannot be accepted.

23. There can be no doubt about the fact that the respondents were entitled to lead evidence on merits before this Court to prove the alleged misconduct of the petitioner in case the enquiry was found to be in violation of the principles of natural justice. Now, the next question which arises for consideration before this Court as to whether the alleged misconduct against the petitioner has been proved before this Court. The perusal of the dismissal letter Ex. PW-1/C shows that the services of the petitioner were terminated on the basis of the enquiry report dated 9.5.2016 Ex. RW-2/A on the ground that the petitioner was found involved alongwith two other workers in tempering with the cash boxes of the Temple Trust and CCTV cameras and also in misappropriating the cash of the Temple Trust. But to prove the aforesaid misconduct, no satisfactory evidence has been led by the respondents before this Court except the CD Ex. RW-1/A which has been allegedly extracted from CCTV Footage by RW-1. However, no credence can be attached to the CD Ex. RW-1/A in view of the cross-examination of RW-1 wherein he admitted that he was not authorized to prepare the CD Ex. RW-1/A and no written orders had been passed by the SDM Nahan directing him to prepare the CD. He further admitted that he had prepared the CD Ex. RW 1/A in the month of May 2018 and he had not prepared the same directly from the CCTV footage. He had also not produced the original CD and he admitted that the CCTV Footage can be edited at any point of time by anyone. He expressed his ignorance to the suggestion of the learned counsel for the petitioner as to whether CCTV Footage for the month of July/August 2015 was tempered with or not. He further admitted that the petitioner was not called while preparing the CCTV Footage. Therefore, in view of the admission of the RW-1 that the petitioner was not associated in preparing the CD from CCTV Footage and also that the CCTV Footage can be edited at any point of time by anyone and that the CD Ex. RW-1/A was not prepared directly from the CCTV Footage, no credence can be attached to the CD Ex. RW-1/A. No other evidence has been led by the respondents in order to prove the alleged misconduct against the petitioner. On the other hand the petitioner has examined three PWs *i.e.* PW-2 to PW-4 who are the employees of the Temple Trust and they categorically deposed that the petitioner used to work sincerely and performed every work honestly and the entire allegations regarding tempering with cash box and CCTV Camera leveled against the petitioner are totally false. PW-2 to PW-4 were cross-examined by the learned counsel for the respondents, however, nothing favourable could be elicited from their cross-examination. No employee/workman has been examined before this Court by the respondents to prove that the petitioner was found tempering with the cash box and CCTV Cameras. There is no eye witness examined by the respondents that the petitioner was found misappropriating with the cash of the temple trust. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was found tempering with the CCTV Cameras and cash boxes as such the respondents have failed to prove the alleged misconduct of the petitioner before this Court.

24. Therefore, in view of the fact that the enquiry conducted against the petitioner was in violation of the principles of natural justice and also in view of the fact that the respondents have failed to prove the alleged misconduct against the petitioner before this Court, it can safely be held that the dismissal of the petitioner *w.e.f.* 15-9-2016 was illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the petitioner and against the respondents.

Issue No. 2:

25. Since, I have held under issue No. 1 above that the termination of the services of the petitioner by the respondents *w.e.f.* 15-9-2016 is illegal and unjustified, hence, the petitioner is held

entitled to reinstatement in service with seniority and continuity. The learned counsel for the respondents contended that the respondents have lost the confidence in the petitioner and once the employer lost the confidence in the employee and the bonafide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenges and in case of loss of confidence reinstatement cannot be directed. She also placed reliance upon the decisions of the Hon'ble Supreme Court reported in AIR 2007 SC 152 titled as Depot Manager APSRTC Vs. Raghuda Siva Sankar Prasad, (2008) 4 SCC 517 titled as workmen of Balmadies Estates Vs. Management Balmadies Estate and Ors., AIR 2005 SC 2769 titled as Bharat Heavy Electricals Ltd. Vs. M. Chandrashekhar Reddy and Ors. However, this contention of the learned counsel for the respondents cannot be accepted as the respondents have failed to prove on record the alleged misconduct of the petitioner as such the question of loss of confidence does not arise. The case law cited by the learned counsel for the respondents are not applicable in the facts and circumstances of the present case.

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

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

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

28. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. Therefore, in view of the entire evidence on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any backwages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondents.

Issue No. 3 :

29. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is not maintainable especially when the reference has been sent by the appropriate government to this Court for adjudication and I find nothing wrong with the

present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 20th Day of September, 2018.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

“Greater Participation for a Stronger Democracy”

ELECTION DEPARTMENT, GOVERNMENT OF HIMACHAL PRADESH
Block No. 38, SDA Complex, Kasumpti, Shimla-171 009

NOTIFICATION

Shimla, the 3rd April, 2019

No. 5-18/2007-ELN.—On the recommendations of Departmental Promotion Committee, the Governor, Himachal Pradesh, is pleased to order promotion of Sh. Rajesh Kumar, Tehsildar (Election), Class-I (Gazetted) to the post of Electoral Officer, Class-I (Gazetted) in the pay scale of ₹ 15600—39100/- + ₹ 5400/- Grade Pay + ₹ 2000/- Secretariat Pay in the Election Department, against vacancy, with immediate effect.

The Governor, Himachal Pradesh, is further pleased to order posting of aforesaid officer as Electoral Officer, Class-I (Gazetted) in the Election Department Headquarters, Shimla against vacancy.

The aforesaid officer will have to exercise option for fixation of pay under the provisions of saving clause of FR-22(I)(a)(1) within a period of one month from the date of joining as Electoral Officer.

By order,
Sd/-
Chief Electoral Officer-cum-Secretary (Election),
Government of Himachal Pradesh.

निर्वाचन विभाग

अधिसूचना

शिमला-171 009, 3 अप्रैल, 2019

संख्या: 3-3/2018-ई.एल.एन.-1594.—भारत निर्वाचन आयोग के निदेश संख्या 576/3/ईवीएम/2019/एसडीआर/खण्ड-II, दिनांक 22 मार्च, 2019 जो कि लोक सभा निर्वाचन-2019 में निर्धारित रीति से इलेक्ट्रॉनिक मतदान मशीनों के माध्यम से मत डालने, रिकार्ड करने और वीवीपीएटी प्रयोग करने के बारे में है, को अंग्रेजी रूपान्तर सहित, जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,
देवेश कुमार,
 मुख्य निर्वाचन अधिकारी,
 हिमाचल प्रदेश।

भारत निर्वाचन आयोग
 निर्वाचन सदन, अशोक रोड़, नई दिल्ली-110 001

निदेश

दिनांक: 22 मार्च, 2019

सं. 576/3/ईवीएम/2019/एसडीआर/खण्ड-II.—यतः, लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 61क यह उपबंधित करती है कि वोटिंग मशीनों द्वारा मतदान और मतों का अभिलेखन ऐसी रीति, जैसी कि निर्धारित की जाए, से ऐसे निर्वाचन क्षेत्र या निर्वाचन क्षेत्रों में अपनाया जाए जैसा कि भारत निर्वाचन आयोग, प्रत्येक मामले की परिस्थितियों को ध्यान में रखते हुए विनिर्दिष्ट करें; और

2. यतः, निर्वाचनों का संचालन नियम, 1961 के नियम 49क के परन्तुक के अनुसार, भारत निर्वाचन आयोग द्वारा यथाअनुमोदित डिजाइन वाले ड्राप बॉक्स सहित एक प्रिंटर, ऐसे निर्वाचन क्षेत्र या निर्वाचन क्षेत्रों या उसके भागों में मतों के पेपर ट्रेल के मुद्रण के लिए मतदान मशीन के साथ भी जोड़ा जाए जैसा कि भारत निर्वाचन आयोग द्वारा निदेश दिया जाए; और

3. यतः, आयोग ने भारत के सभी संसदीय निर्वाचन क्षेत्रों, आन्ध्र प्रदेश, अरुणाचल प्रदेश, ओडिशा और सिक्किम के सभी विधान सभा निर्वाचन क्षेत्रों तथा बिहार, गोवा, गुजरात, मध्य प्रदेश, महाराष्ट्र, मेघालय, मिजोरम, नागालैंड, पुडुचेरी, तमिलनाडु, उत्तर प्रदेश तथा पश्चिम बंगाल के 37 विधान सभा निर्वाचन क्षेत्रों (अनुलग्नक-1 के अनुसार) की परिस्थितियों पर विचार किया है, और आयोग संतुष्ट है कि उपर्युक्त संसदीय/विधान सभा निर्वाचन क्षेत्रों में मतदान के लिए पर्याप्त संख्या में इलेक्ट्रॉनिक वोटिंग मशीनें तथा पेपर ट्रेल [वोटर वैरिफायबल पेपर आडिट ट्रेल (वीवीपीएटी)] मुद्रित करने के लिए प्रिंटर उपलब्ध हैं, मतदान कार्मिक इलेक्ट्रॉनिक वोटिंग मशीनों तथा पेपर ट्रेल (इसमें इसके उपरान्त वीवीपीएटी प्रिंटर के रूप में उल्लिखित) के लिए प्रिंटर का दक्षतापूर्ण संचालन करने के लिए प्रशिक्षित हैं तथा निर्वाचक भी इलेक्ट्रॉनिक वोटिंग मशीनों एवं वीवीपीएटी प्रिंटरों की कार्यप्रणाली से पूर्णतया परिचित हैं।

4. अतः, अब भारत निर्वाचन आयोग लोक प्रतिनिधित्व अधिनियम, 1951 की उक्त धारा 61क तथा निर्वाचनों का संचालन नियम, 1961 के नियम 49क के अंतर्गत अपनी शक्तियों का प्रयोग करते हुए एतद्वारा लोक सभा के वर्तमान साधारण निर्वाचन, 2019 में सभी संसदीय निर्वाचन क्षेत्रों, राज्य विधान सभाओं के वर्तमान साधारण निर्वाचन में आन्ध्र प्रदेश, अरुणाचल प्रदेश, ओडिशा और सिक्किम के सभी विधान सभा निर्वाचन क्षेत्रों तथा बिहार, गोवा, गुजरात, मध्य प्रदेश, महाराष्ट्र, मेघालय, मिजोरम, नागालैंड, पुडुचेरी,

तमिलनाडु, उत्तर प्रदेश तथा पश्चिम बंगाल के 37 विधान सभा निर्वाचन क्षेत्रों (अनुलग्नक-1 के अनुसार), जहां आयोग द्वारा घोषित अनुसूची के अनुसार दिनांक 10-03-2019, 13-03-2019 और 14-03-2019 को उप-निर्वाचन किए जा रहे हैं, जहां मत निर्वाचनों का संचालन नियम, 1961 के अधीन निर्धारित रीति से तथा इस विषय पर आयोग द्वारा समय-समय पर जारी किए गए अनुपूरक अनुदेशों के अन्तर्गत इलेक्ट्रॉनिक वोटिंग मशीनों तथा वीवीपीएटी प्रिंटर के माध्यम से डाले और रिकार्ड किए जाएंगे, को विनिर्दिष्ट करता है।

5. आयोग भारत इलेक्ट्रॉनिक्स लिमिटेड, बंगलौर तथा इलेक्ट्रॉनिक्स कार्पोरेशन आफ इण्डिया लिमिटेड, हैदराबाद द्वारा यथा-विकसित इलेक्ट्रॉनिक्स वोटिंग मशीन और ड्रॉप बॉक्स सहित प्रिंटर (वीवीपीएटी प्रिंटरों), जिसे उपर्युक्त सभी निर्वाचन क्षेत्रों में मतों को डालने और रिकार्ड करने के लिए उपयोग करने हेतु उक्त वोटिंग मशीनों के साथ जोड़ा जाएगा, के डिजाइन को भी अनुमोदित करता है।

आदेश से,
एन.टी. भूटिया,
सचिव।

अनुबंध-I

क्रम सं०	राज्य	विधान सभा निर्वाचन क्षेत्र की संख्या	विधान सभा निर्वाचन क्षेत्र का नाम
1	2	3	4
1.	बिहार	212	डिहरी
2.	बिहार	237	नवादा
3.	गोवा	1	मांद्रे
4.	गोवा	5	म्हापसा
5.	गोवा	22	सिरोडा
6.	गुजरात	21	उंझा
7.	गुजरात	64	ध्रांगध्रा
8.	गुजरात	77	जामनगर ग्रामीण
9.	गुजरात	85	माणावदर
10.	गुजरात	91	तलाला
11.	मध्य प्रदेश	126	छिन्दवाड़ा
12.	महाराष्ट्र	48	काटोल
13.	मेघालय	48	सेल्सेल्ला (अ.ज.जा.)
14.	मिजोरम	15	एजवाल पश्चिम-1 (अ.ज.जा.)
15.	नागालैण्ड	26	औग्लेनडेन (अ.ज.जा.)
16.	पुडुचेरी	9	थट्टानचावाडी
17.	तमिलनाडु	5	पूनामल्लै (अ.जा.)
18.	तमिलनाडु	12	पेराम्बुर
19.	तमिलनाडु	33	थिरुपूरुर
20.	तमिलनाडु	39	शोलिंगुर
21.	तमिलनाडु	46	गुडियाट्टम (अ.जा.)
22.	तमिलनाडु	48	अम्बुर
23.	तमिलनाडु	55	होसुर
24.	तमिलनाडु	60	पाप्पिरेडिडप्पट्टी
25.	तमिलनाडु	61	हरूर (अ.जा.)
26.	तमिलनाडु	130	निलाकोटेई (अ.जा.)

27.	तमिलनाडु	168	तिरुवारूर
28.	तमिलनाडु	174	थन्जावुर
29.	तमिलनाडु	187	मानामदुरई (अ.जा.)
30.	तमिलनाडु	198	अन्डीपट्टी
31.	तमिलनाडु	199	पेरियाकुलम (अ.जा.)
32.	तमिलनाडु	204	सत्तुर
33.	तमिलनाडु	209	पारामाकुडी (अ.जा.)
34.	तमिलनाडु	213	विलाथीकुलम
35.	उत्तर प्रदेश	138	निघासन
36.	पश्चिम बंगाल	88	कृष्णागंज (अ.जा.)
37.	पश्चिम बंगाल	176	उलुबेरिया पूर्व

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001

DIRECTION

Dated : 22nd March, 2019

No. 576/3/EVM/2019/SDR-VOL-II.—Whereas, Section 61A of the Representation of the People Act, 1951, provides that the giving and recording of votes by Voting Machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission of India may, having regard to the circumstances of each case, specify; and

2. Whereas, as per the proviso to Rule 49A of the Conduct of Elections Rules, 1961, a Printer with a drop box of such design, as may be approved by the Election Commission of India, may also be attached to voting machine for printing a paper trail of the vote, in such constituency or constituencies or parts thereof as the Election Commission of India may direct; and

3. Whereas, the Commission has considered the circumstances in all the Parliamentary Constituencies of India, all the Assembly Constituencies of Andhra Pradesh, Arunachal Pradesh, Odisha & Sikkim and in the 37 Assembly Constituencies (as per Annexure-I) of Bihar, Goa, Gujarat, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Nagaland, Puducherry, Tamil Nadu, Uttar Pradesh & West Bengal, and is satisfied that sufficient number of Electronic Voting Machines and Printers for printing Paper Trail [Voter Verifiable Paper Audit Trail (VVPAT)] are available for taking the poll in the abovementioned Parliamentary/Assembly Constituencies, the polling personnel are well trained in efficient handling of the Electronic Voting Machines and Printers for Paper Trail (hereafter referred to as 'VVPAT Printers') and the electors are also fully conversant with the operation of the Electronic Voting Machines and the VVPAT Printers;

4. Now, therefore, the Election Commission of India, in exercise of its powers under the said Section 61A of the Representation of the People Act, 1951, and Rule 49A of the Conduct of Elections Rules, 1961, hereby specifies all the Parliamentary Constituencies at the current general election to the House of the People, 2019, all the Assembly Constituencies of Andhra Pradesh, Arunachal Pradesh, Odisha & Sikkim at the current General Election to the State Legislative Assemblies of 37 Assembly Constituencies (as per Annexure-I) of Bihar, Goa, Gujarat, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Nagaland, Puducherry, Tamil Nadu, Uttar Pradesh & West Bengal, from where bye-elections are being held, as per the schedule announced by the Commission on 10-03-2019, 13-03-2019 & 14-03-2019 as the constituencies in which the votes,

shall be given and recorded by means of Electronic Voting Machines and the said VVPAT printers in the manner prescribed, under the Conduct of Elections Rules, 1961, and the supplementary instructions issued by the Commission from time to time on the subject.

5. The Commission also hereby approves the design of the Electronic Voting Machine and the Printer with the drop box (the VVPAT Printers) as developed by the Bharat Electronics Ltd., Bangalore and Electronics Corporation of India Ltd., Hyderabad, which shall be attached to the said machines, to be used for the giving and recording of votes in all the Assembly Constituencies.

By order,
N.T. BHUTIA,
Secretary.

Annexure-I

Sl. No.	State	AC No.	Name of AC
1	2	3	4
1.	Bihar	212	Dehri
2.	Bihar	237	Nawada
3.	Goa	1	Mandrem
4.	Goa	5	Mapusa
5.	Goa	22	Siroda
6.	Gujarat	21	Unjha
7.	Gujarat	64	Dhrangadhra
8.	Gujarat	77	Jamnagar Rural
9.	Gujarat	85	Manavadar
10.	Gujarat	91	Talala
11.	Madhya Pradesh	126	Chhindwara
12.	Maharashtra	48	Katol
13.	Meghalaya	48	Selsella (ST)
14.	Mizoram	15	Aizawl West- I (ST)
15.	Nagaland	26	Aonglenden (ST)
16.	Puducherry	9	Thattanchavady
17.	Tamil Nadu	5	Poonamallee (SC)
18.	Tamil Nadu	12	Perambur
19.	Tamil Nadu	33	Thiruporur
20.	Tamil Nadu	39	Sholingur
21.	Tamil Nadu	46	Gudiyattham (SC)
22.	Tamil Nadu	48	Ambur
23.	Tamil Nadu	55	Hosur
24.	Tamil Nadu	60	Pappireddippatti
25.	Tamil Nadu	61	Harur (SC)
26.	Tamil Nadu	130	Nilakkottai (SC)
27.	Tamil Nadu	168	Thiruvavur
28.	Tamil Nadu	174	Thanjavur
29.	Tamil Nadu	187	Manamadurai (SC)
30.	Tamil Nadu	198	Andipatti
31.	Tamil Nadu	199	Periyakulam (SC)

32.	Tamil Nadu	204	Sattur
33.	Tamil Nadu	209	Paramakudi (SC)
34.	Tamil Nadu	213	Vilathikulam
35.	Uttar Pradesh	138	Nighasan
36.	West Bengal	88	Krishnaganj (SC)
37.	West Bengal	176	Uluberia Purba

**In the Court of Executive Magistrate, Dharamshala, Tehsil Dharamshala,
District Kangra (H.P.)**

1. Shri Nikhil Jasrotia s/o Kewal Raj Jasrotia, r/o Tika Lehsar Yol Cantt., Tehsil Dharamshala, District Kangra (H.P.).

2. Smt. Kasum Thakur d/o Sh. Khem Raj, r/o Village Serkala, P.O. Kutachi, Sub-Tehsil Nihri, District Mandi (H.P.).

Versus

1. The General Public

PUBLIC NOTICE

Whereas the above named applicant have made an application under section 8(4) of the H.P. Registration of Marriages Act, 1996 alongwith an affidavit stating therein that they have solemnized their marriage on 13-12-2018 at Yol, Tehsil Dharamshala. But has not been found entered in the records of the Registrar of Marriages *i. e.* Secretary.

And whereas, they have also stated that they were not aware of the laws of the registration of marriages with the Registrar of Marriages and now, therefore necessary orders for the registration of their marriage be passed so that their marriage is registered by the concerned authority.

Now, therefore, objections are invited from the general public that if anyone has any objection regarding the registration of the marriage of the above named applicants, then they should appear before the court of undersigned on 16-04-2019 at Tehsil Office Dharamshala at 2.00 P.M. either personally or through their authorized agent.

In the event of their failure to do so, orders shall be passed *ex-parte* against the respondents for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the court on this 18-03-2019.

Seal.

Sd/-
Executive Magistrate,
Dharamshala.

**In the Court of Executive Magistrate, Dharamshala, Tehsil Dharamshala,
District Kangra (H.P.)**

1. Shri Digvijay Singh Jamwal s/o Sh. Ranbir Singh, r/o Upper Dari, Tehsil Dharamshala, District Kangra.

2. Smt. Manisha Singh d/o Sh. Sukh Dev Singh, r/o Upper Dari, Tehsil Dharamshala, District Kangra.

Versus

1. The General Public
2. Secretary G.P. Dari
3. Commissioner M/C Dharamshala

PUBLIC NOTICE

Whereas the above named applicants have made an application under section 8(4) of the H.P. Registration of Marriages Act, 1996 alongwith an affidavit stating therein that they have solemnized their marriage on 1-08-2018 at Upper Dari, Tehsil Dharamshala but has not been found entered in the records of the Registrar of Marriages *i. e.* The Commissioner M/C. Dharamshala.

And whereas, they have also stated that they were not aware of the laws of the registration of marriages with the Registrar of Marriages and now, therefore necessary orders for the registration of their marriage be passed so that their marriage is registered by the concerned authority.

Now, therefore, objections are invited from the general public that if anyone has any objection regarding the registration of the marriage of the above named applicants, then they should appear before the court of undersigned on 23-04-2019 at Tehsil Office Dharamshala at 10.00 A.M. either personally or through their authorized agent.

In the event of their failure to do so, orders shall be passed *ex-parte* against the respondents for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the court on this 18th day of March, 2019.

Seal.

Sd/-
Executive Magistrate,
Dharamshala.

ब अदालत कार्यकारी दण्डाधिकारी, द्वितीय श्रेणी, बन्जार, जिला कुल्लू (हि० प्र०)

श्री राजेन्द्र सिंह पुत्र श्री हुकम राम, निवासी गांव पोखरी थाच, डाकघर कलवारी, तहसील बन्जार, जिला कुल्लू (हि० प्र०)

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि उसकी माता श्रीमती ध्यानी देवी की मृत्यु तिथि 11-05-1991 है, जो कि ग्राम पंचायत कलवारी के अभिलेख में दर्ज न है और जिसे प्रार्थी अब दर्ज करवाना चाहता है।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी की माता जी श्रीमती ध्यानी देवी की मृत्यु तिथि 11-05-1991 ग्राम पंचायत कलवारी के अभिलेख में दर्ज करने में यदि किसी को कोई आपत्ति हो तो वह दिनांक 15-04-2019 तक असालतन व वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करे। बाद गुजरने तारीख किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर मृत्यु तिथि के इन्द्राज करने के आदेश पारित किए जाएंगे।

आज दिनांक 25-03-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी द्वितीय श्रेणी,
बन्जार, जिला कुल्लू (हि0 प्र0)

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, बन्जार, जिला कुल्लू (हि0 प्र0)

श्री तारा चन्द पुत्र श्री रणजीत सिंह, निवासी गांव पाहली, डाक0 व तहसील बन्जार, जिला कुल्लू (हि0 प्र0)
प्रार्थी।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री तारा चन्द ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि उसकी पुत्री मनीषा की जन्म तिथि 14-09-2012 है, जो कि ग्राम पंचायत चैहणी के अभिलेख में दर्ज न है और जिसे प्रार्थी अब दर्ज करवाना चाहता है।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि तारा चन्द की पुत्री मनीषा की जन्म तिथि 14-09-2012 ग्राम पंचायत चैहणी के अभिलेख में दर्ज करने में यदि किसी को कोई आपत्ति हो तो वह दिनांक 15-04-2019 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करे। बाद गुजरने तारीख किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर जन्म तिथि के इन्द्राज करने के आदेश पारित किए जाएंगे।

आज दिनांक 25-03-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, बन्जार, तहसील बन्जार, जिला कुल्लू (हि0 प्र0)

किस्म मुकद्दमा.—नगर पंचायत बन्जार के अभिलेख में नाम दुरुस्ती करने बारे।

श्रीमती सूरमा देवी पत्नी श्री दलीप सिंह, निवासी गांव वीणी, डाकघर चैहणी, तहसील बन्जार, जिला कुल्लू, हि0 प्र0 ने बमय शपथ—पत्र इस कार्यालय/न्यायालय में प्रार्थना—पत्र इस आशय से गुजारा है कि प्रार्थिन के पुत्र भूपेन्द्र ठाकुर के पैदाईश के रिकार्ड में प्रार्थिन का नाम सीता देवी लिखा गया है जो कि गलत है। जबकि प्रार्थिन का नाम सूरमा देवी है जो सही है। इसे नगर पंचायत बन्जार के अभिलेख में दुरुस्त करवाना चाहती है।

इस सम्बन्ध में इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को प्रार्थिन के पुत्र के पैदाईश के रिकार्ड में प्रार्थिन का नाम सीता देवी के स्थान पर सूरमा देवी नगर पंचायत बन्जार के अभिलेख में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 15-04-2019 तक असालतन या वकालतन अपनी आपत्ति पेश करें, तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर दुरुस्ती के आदेश पारित किए जाएंगे।

आज दिनांक 25-03-2019 को मेरे हस्ताक्षर व कार्यालय मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, बन्जार, जिला कुल्लू (हि0 प्र0)

किस्म मुकद्दमा.—राजस्व रिकार्ड में नाम दुरुस्त करने बारे।

श्री अनूप राम पुत्र श्री अन्नत राम, निवासी गांव नाली, डा0 सोझा, तहसील बन्जार, जिला कुल्लू, हि0 प्र0 ने बमय शपथ—पत्र इस कार्यालय/न्यायालय में प्रार्थना—पत्र इस आशय से गुजारा है कि प्रार्थी का नाम राजस्व रिकार्ड में नूप राम लिखा गया है। जोकि गलत है। जबकि प्रार्थी का नाम अनूप राम है जोकि सही है। इसे दुरुस्त करवाना चाहता है।

इस सम्बन्ध में इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को नूप राम की जगह अनूप राम करने बारे कोई आपत्ति हो तो वह दिनांक 15-04-2019 तक असालतन व वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करें, तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर दुरुस्ती के आदेश पारित किए जाएंगे।

आज दिनांक 25-03-2019 को मेरे हस्ताक्षर व कार्यालय मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, द्वितीय श्रेणी, बन्जार, जिला कुल्लू (हि0 प्र0)

श्री संगत राम पुत्र श्री देवी राम, निवासी गांव व डाकघर चैहणी, तहसील बन्जार, जिला कुल्लू (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि उसकी पत्नी स्व0 श्रीमती कृष्णा देवी की मृत्यु तिथि 03-07-1998 है, जो कि ग्राम पंचायत चैहणी के अभिलेख में दर्ज न है और जिसे प्रार्थी अब दर्ज करवाना चाहता है।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी की पत्नी स्व0 श्रीमती कृष्णा देवी की मृत्यु तिथि 03-07-1998 है, जो कि ग्राम पंचायत चैहणी के अभिलेख में दर्ज करने में यदि कोई आपत्ति हो तो वह दिनांक 15-04-2019 तक असातन व वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करे। बाद गुजरने तारीख किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर मृत्यु तिथि के इन्द्राज करने के आदेश पारित किए जाएंगे।

आज दिनांक 25-03-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी, द्वितीय श्रेणी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर (हि0 प्र0)

प्रकरण संख्या : 03

श्री Aseem Chowdhery पुत्र Late श्री Balbir Singh, निवासी Devi Nagar, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0

बनाम

आम जनता

प्रतिवादी

उनवान मुकद्दमा.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Aseem Chowdhery पुत्र Late श्री Balbir Singh, निवासी Devi Nagar, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0 ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी Aseem Chowdhery की जन्म तिथि 20-06-1980 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित नगरपालिका परिषद् में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फि 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 नगरपालिका परिषद् M.C. Paonta में अपनी ऊपर वर्णित जन्म तिथि 20-06-1980 को दर्ज करने का अनुरोध किया है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Aseem Chowdhery की जन्म तिथि नगरपालिका परिषद् M.C. Paonta, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 4-5-2019 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 Aseem Chowdhery की जन्म-तिथि को सम्बन्धित 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 3-04-2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

ब अदालत श्री मन मोहन जिष्ट, कार्यकारी दण्डाधिकारी, तहसील कमरऊ, जिला सिरमौर,
हिमाचल प्रदेश

श्री टीका राम पुत्र श्री सुन्दर सिंह, निवासी ग्राम बाग हाबरा, तहसील कमरऊ, जिला सिरमौर
(हि0 प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री टीका राम पुत्र श्री सुन्दर सिंह, निवासी ग्राम बाग हाबरा, तहसील कमरऊ, जिला सिरमौर ने इस अदालत में एक प्रार्थना-पत्र गुजारा है कि उनकी पुत्री सानवी का नाम व जन्म तिथि जोकि 11-10-2016 है जिसे वह अज्ञानतावश ग्राम पंचायत भजोन के जन्म अभिलेख में दर्ज नहीं करवा सका। जिसका मूल प्रकरण मुख्य रजिस्ट्रार (जन्म एवं मृत्यु) व मुख्य चिकित्सा अधिकारी, नाहन, जिला सिरमौर के कार्यालय पत्र संख्या: एचएफडब्ल्यू-एन/एसटी/बीडी/डिलेड केस/2018-3862, दिनांक 21-11-2018 द्वारा संस्तुति सहित इस कार्यालय को प्राप्त हुआ है।

अतः सर्वसाधारण को इस इशतहार के मार्फत सूचित किया जाता है कि इस बारे किसी को कोई उजर/एतराज हो तो दिनांक 12-04-2019 को प्रातः 11.00 बजे या दिनांक 12-04-2019 से पूर्व किसी भी कार्य दिवस में अदालत हजा स्थित कमरऊ में असालतन या वकालतन हाजिर आकर दर्ज करा सकता है। निर्धारित अवधि या इसके पूर्व में कोई आपत्ति प्राप्त न होने की सूरत में प्रार्थना-पत्र टीका राम पुत्र श्री सुन्दर सिंह, निवासी ग्राम बाग हाबरा, तहसील कमरऊ, जिला सिरमौर में नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 11-03-2019 को हमारे हस्ताक्षर व मोहर से जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील कमरऊ, जिला सिरमौर (हि0 प्र0)।

**ब अदालत श्री रामभज, कार्यकारी दण्डाधिकारी, तहसील कमरऊ, जिला सिरमौर,
हिमाचल प्रदेश**

कुमारी Thinlay Dolma d/o late Sh. Lamagon, निवासी ग्राम व डाकघर सतौन, तहसील कमरऊ, जिला सिरमौर (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

कुमारी Thinlay Dolma d/o late Sh. Lamagon, निवासी ग्राम व डाकघर सतौन, तहसील कमरऊ, जिला सिरमौर (हि0 प्र0) की जन्म तिथि जोकि 09-09-1975 को ग्राम पंचायत सतौन के जन्म अभिलेख में दर्ज करवाने बारे मूल प्रकरण मुख्य रजिस्ट्रार (जन्म एवं मृत्यु) व मुख्य चिकित्सा अधिकारी, नाहन, जिला सिरमौर के कार्यालय पत्र संख्या: एचएफडब्ल्यू-एन/एसटी/बीडी/डिलेड केस/2017-3131, दिनांक 26-10-2017 द्वारा संस्तुति सहित इस कार्यालय को प्राप्त हुआ है।

अतः सर्वसाधारण को इस इशतहार के मार्फत सूचित किया जाता है कि इस बारे किसी को कोई उजर/एतराज हो तो दिनांक 16-04-2019 को प्रातः 11.00 बजे या दिनांक 16-04-2019 से पूर्व किसी भी कार्य दिवस में अदालत हजा स्थित कमरऊ में असालतन या वकालतन हाजिर आकर दर्ज करा सकता है। निर्धारित अवधि या इसके पूर्व में कोई आपत्ति प्राप्त न होने की सूरत में प्रार्थना-पत्र कुमारी Thinlay Dolma d/o late Sh. Lamagon, निवासी ग्राम व डाकघर सतौन, तहसील कमरऊ, जिला सिरमौर में नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक को हमारे हस्ताक्षर व मोहर से जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील कमरऊ, जिला सिरमौर (हि0 प्र0)।

**ब अदालत श्री रामभज, कार्यकारी दण्डाधिकारी, तहसील कमरऊ, जिला सिरमौर,
हिमाचल प्रदेश**

श्रीमती सुमित्रा देवी पुत्री श्री मंगल सिंह, निवासी ग्राम कमरऊ (चौकि), तहसील कमरऊ, जिला सिरमौर (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती सुमित्रा देवी पुत्री श्री मंगल सिंह, निवासी ग्राम कमरऊ (चौकि), तहसील कमरऊ, जिला सिरमौर (हि0 प्र0) की जन्म तिथि जोकि 20-06-1969 को ग्राम पंचायत कमरऊ के जन्म अभिलेख में दर्ज करवाने बारे मूल प्रकरण मुख्य रजिस्ट्रार (जन्म एवं मृत्यु) व मुख्य चिकित्सा अधिकारी, नाहन, जिला सिरमौर

के कार्यालय पत्र संख्या: एचएफडब्ल्यू-एन/एसटी/बीडी/डिलेड केस/2017-4709, दिनांक 11-01-2019 द्वारा संस्तुति सहित इस कार्यालय को प्राप्त हुआ है।

अतः सर्वसाधारण को इस इशतहार के मार्फत सूचित किया जाता है कि इस बारे किसी को कोई उजर/एतराज हो तो दिनांक 16-04-2019 को प्रातः 11.00 बजे या दिनांक 16-04-2019 से पूर्व किसी भी कार्य दिवस में अदालत हजा स्थित कमरऊ में असालतन या वकालतन हाजिर आकर दर्ज करा सकता है। निर्धारित अवधि या इसके पूर्व में कोई आपत्ति प्राप्त न होने की सूरत में प्रार्थना-पत्र श्रीमती सुमित्रा देवी पुत्री श्री मंगल सिंह, निवासी ग्राम व डाकघर सतौन, तहसील कमरऊ, जिला सिरमौर में नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक को हमारे हस्ताक्षर व मोहर से जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील कमरऊ, जिला सिरमौर (हि0 प्र0)।